

1 AN ACT concerning pollution.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act shall be cited as the  
5 Northeastern Illinois Nonattainment Area Planning Council  
6 Act.

7 Section 5. Legislative findings.

8 (a) There is an increasing concern about the cumulative  
9 effects of all pollution sources in the Chicagoland  
10 nonattainment area. A permit issued by the Environmental  
11 Protection Agency considers the effects of the individual  
12 source proposed and not the cumulative effects of that source  
13 in combination with other existing sources. A large number  
14 of new pollution sources, including but not limited to peaker  
15 plants, seek construction and operating permits from the  
16 Environmental Protection Agency each year. Local governments  
17 regulate these sources through zoning and land use  
18 ordinances, but often do not have the necessary expertise to  
19 evaluate the environmental impact of these sources.

20 (b) There is currently no comprehensive regional plan  
21 for analyzing the cumulative effects of current pollutant  
22 sources, for determining the location of new pollution  
23 sources, or for limiting the number of new sources in the  
24 Chicagoland nonattainment areas.

25 (c) It is the goal of this legislation to develop and  
26 implement a comprehensive regional plan to provide the  
27 necessary expertise for the consideration of current  
28 pollution sources and the siting of new pollution sources.

29 Section 10. Definitions. For the purposes of this Act:

30 "Northeastern Illinois nonattainment area" means the

1 counties of Cook, Lake, McHenry, Will, DuPage, and Kane, the  
2 townships of Aux Sable and Goose Lake in Grundy County, the  
3 township of Oswego in Kendall County, and any other portion  
4 of Northeastern Illinois that may be designated as part of  
5 the Chicago Ozone Nonattainment Area by the United States  
6 Environmental Protection Agency.

7 "Source" means any source of air, water, or noise  
8 pollution whether or not permitted by the Environmental  
9 Protection Agency.

10 Section 15. Northeastern Illinois Nonattainment Area  
11 Planning Council.

12 (a) There is created a Northeastern Illinois  
13 Nonattainment Area Planning Council. It shall consist of the  
14 following members: the Director of the Environmental  
15 Protection Agency, or his or her designee; the Director of  
16 Natural Resources, or his or her designee; the Director of  
17 Commerce and Community Affairs, or his or her designee; the  
18 Chairman of the Illinois Commerce Commission, or his or her  
19 designee; the Chairman of the Pollution Control Board, or his  
20 or her designee; one representative of the Illinois  
21 Environmental Council; one representative of the Illinois  
22 Manufacturers Association; 3 representatives of municipal  
23 governments in the Northeastern Illinois nonattainment area  
24 designated by the Illinois Municipal League; and 3  
25 representatives of county governments in the nonattainment  
26 area designated by the Illinois Association of County Board  
27 Members and Commissioners.

28 (b) The Council shall have the following duties:

29 (1) to develop standards by which the Environmental  
30 Protection Agency shall comprehensively review permit  
31 applications for the cumulative effect of a facility and  
32 for the cumulative effect of air, water, land, and noise  
33 pollutants;

1           (2) to develop additional and more restrictive  
2 standards by which the Environmental Protection Agency  
3 shall comprehensively review permit applications for the  
4 cumulative effect of a facility and for the cumulative  
5 effect of air, water, land, and noise pollutants that  
6 must be met depending on the proximity of the proposed  
7 facility to a school;

8           (3) to provide guidelines for local governments to  
9 use when making zoning and land use decisions for  
10 facilities;

11           (4) to provide expertise for local governments who  
12 are making zoning and land use decisions by serving as a  
13 resource for local governments regarding environmental  
14 considerations in the siting process;

15           (5) to develop a database with cumulative  
16 information about all pollution sources in the  
17 Northeastern Illinois nonattainment area that will be  
18 available to the public on the internet;

19           (6) to develop regionalized siting criteria for new  
20 pollution sources; and

21           (7) to make recommendations for regulations and  
22 legislation necessary to develop regional planning for  
23 siting of pollution sources.

24           (c) Council members may not be compensated for their  
25 services, but shall receive reimbursement for their expenses.

26           (d) The Council may hire an executive director and the  
27 technical staff necessary to implement its duties.

28           (e) The necessary expenses of the Council shall be  
29 appropriated from the Environmental Protection Trust Fund and  
30 the CAA Permit Fund.

31           Section 905. The Environmental Protection Trust Fund Act  
32 is amended by changing Section 1 as follows:

1 (30 ILCS 125/1) (from Ch. 111 1/2, par. 1061)

2 Sec. 1. There is hereby created the Environmental  
3 Protection Trust Fund Commission to be composed of the  
4 following ex officio members: the Attorney General, the  
5 Director of Natural Resources, the Chairman of the Pollution  
6 Control Board, and the Director of the Environmental  
7 Protection Agency. Each member may designate a proxy to act  
8 in his stead. The Commission shall elect from its number a  
9 chairman and a majority of the Commissioners shall constitute  
10 a quorum for the conduct of business, the affirmative votes  
11 of at least 3 members being necessary for any action.  
12 Members of the Commission shall serve without compensation.

13 The Commission may accept, receive and administer on  
14 behalf of the State any grants, gifts, loans, or other funds  
15 made available to the Commission from any source for purposes  
16 of environmental protection and related enforcement programs.  
17 Any such funds received by the Commission under this Section  
18 shall be appropriated by the General Assembly, and shall be  
19 deposited in a trust fund designated as the Environmental  
20 Protection Trust Fund with the State Treasurer and held and  
21 disbursed by the State Treasurer in accordance with "An Act  
22 in relation to the receipt, custody, and disbursement of  
23 money allotted by the United States of America or any Agency  
24 thereof for the use in this State", approved July 3, 1939, as  
25 amended, provided that such monies shall be used only for the  
26 purposes for which they are contributed and any balance  
27 remaining shall be returned to the contributor, and provided  
28 further that such monies received from the United States of  
29 America or any Agency thereof may be used only if first  
30 appropriated by the General Assembly. Monies in the  
31 Environmental Protection Trust Fund may be appropriated to  
32 cover the expenses incurred under the Northeastern Illinois  
33 Nonattainment Area Planning Council Act.

34 The Commission has the authority to approve grants from

1 the Environmental Protection Trust Fund to the Office of the  
2 Attorney General, the Environmental Protection Agency, the  
3 Pollution Control Board or the Department of Natural  
4 Resources in order to carry out the provisions of this  
5 Section.

6 (Source: P.A. 89-445, eff. 2-7-96.)

7 Section 910. The Environmental Protection Act is amended  
8 by changing Section 39.5 as follows:

9 (415 ILCS 5/39.5) (from Ch. 111 1/2, par. 1039.5)

10 Sec. 39.5. Clean Air Act Permit Program.

11 1. Definitions.

12 For purposes of this Section:

13 "Administrative permit amendment" means a permit revision  
14 subject to subsection 13 of this Section.

15 "Affected source for acid deposition" means a source that  
16 includes one or more affected units under Title IV of the  
17 Clean Air Act.

18 "Affected States" for purposes of formal distribution of  
19 a draft CAAPP permit to other States for comments prior to  
20 issuance, means all States:

21 (1) Whose air quality may be affected by the source  
22 covered by the draft permit and that are contiguous to  
23 Illinois; or

24 (2) That are within 50 miles of the source.

25 "Affected unit for acid deposition" shall have the  
26 meaning given to the term "affected unit" in the regulations  
27 promulgated under Title IV of the Clean Air Act.

28 "Applicable Clean Air Act requirement" means all of the  
29 following as they apply to emissions units in a source  
30 (including regulations that have been promulgated or approved  
31 by USEPA pursuant to the Clean Air Act which directly impose  
32 requirements upon a source and other such federal

1 requirements which have been adopted by the Board. These may  
2 include requirements and regulations which have future  
3 effective compliance dates. Requirements and regulations  
4 will be exempt if USEPA determines that such requirements  
5 need not be contained in a Title V permit):

6 (1) Any standard or other requirement provided for  
7 in the applicable state implementation plan approved or  
8 promulgated by USEPA under Title I of the Clean Air Act  
9 that implement the relevant requirements of the Clean Air  
10 Act, including any revisions to the state Implementation  
11 Plan promulgated in 40 CFR Part 52, Subparts A and O and  
12 other subparts applicable to Illinois. For purposes of  
13 this subsection (1) of this definition, "any standard or  
14 other requirement" shall mean only such standards or  
15 requirements directly enforceable against an individual  
16 source under the Clean Air Act.

17 (2)(i) Any term or condition of any preconstruction  
18 permits issued pursuant to regulations approved or  
19 promulgated by USEPA under Title I of the Clean Air  
20 Act, including Part C or D of the Clean Air Act.

21 (ii) Any term or condition as required  
22 pursuant to Section 39.5 of any federally  
23 enforceable State operating permit issued pursuant  
24 to regulations approved or promulgated by USEPA  
25 under Title I of the Clean Air Act, including Part C  
26 or D of the Clean Air Act.

27 (3) Any standard or other requirement under Section  
28 111 of the Clean Air Act, including Section 111(d).

29 (4) Any standard or other requirement under Section  
30 112 of the Clean Air Act, including any requirement  
31 concerning accident prevention under Section 112(r)(7) of  
32 the Clean Air Act.

33 (5) Any standard or other requirement of the acid  
34 rain program under Title IV of the Clean Air Act or the

1 regulations promulgated thereunder.

2 (6) Any requirements established pursuant to  
3 Section 504(b) or Section 114(a)(3) of the Clean Air Act.

4 (7) Any standard or other requirement governing  
5 solid waste incineration, under Section 129 of the Clean  
6 Air Act.

7 (8) Any standard or other requirement for consumer  
8 and commercial products, under Section 183(e) of the  
9 Clean Air Act.

10 (9) Any standard or other requirement for tank  
11 vessels, under Section 183(f) of the Clean Air Act.

12 (10) Any standard or other requirement of the  
13 program to control air pollution from Outer Continental  
14 Shelf sources, under Section 328 of the Clean Air Act.

15 (11) Any standard or other requirement of the  
16 regulations promulgated to protect stratospheric ozone  
17 under Title VI of the Clean Air Act, unless USEPA has  
18 determined that such requirements need not be contained  
19 in a Title V permit.

20 (12) Any national ambient air quality standard or  
21 increment or visibility requirement under Part C of Title  
22 I of the Clean Air Act, but only as it would apply to  
23 temporary sources permitted pursuant to Section 504(e) of  
24 the Clean Air Act.

25 "Applicable requirement" means all applicable Clean Air  
26 Act requirements and any other standard, limitation, or other  
27 requirement contained in this Act or regulations promulgated  
28 under this Act as applicable to sources of air contaminants  
29 (including requirements that have future effective compliance  
30 dates).

31 "CAAPP" means the Clean Air Act Permit Program, developed  
32 pursuant to Title V of the Clean Air Act.

33 "CAAPP application" means an application for a CAAPP  
34 permit.

1 "CAAPP Permit" or "permit" (unless the context suggests  
2 otherwise) means any permit issued, renewed, amended,  
3 modified or revised pursuant to Title V of the Clean Air Act.

4 "CAAPP source" means any source for which the owner or  
5 operator is required to obtain a CAAPP permit pursuant to  
6 subsection 2 of this Section.

7 "Clean Air Act" means the Clean Air Act, as now and  
8 hereafter amended, 42 U.S.C. 7401, et seq.

9 "Designated representative" shall have the meaning given  
10 to it in Section 402(26) of the Clean Air Act and the  
11 regulations promulgated thereunder which states that the term  
12 'designated representative' shall mean a responsible person  
13 or official authorized by the owner or operator of a unit to  
14 represent the owner or operator in all matters pertaining to  
15 the holding, transfer, or disposition of allowances allocated  
16 to a unit, and the submission of and compliance with permits,  
17 permit applications, and compliance plans for the unit.

18 "Draft CAAPP permit" means the version of a CAAPP permit  
19 for which public notice and an opportunity for public comment  
20 and hearing is offered by the Agency.

21 "Effective date of the CAAPP" means the date that USEPA  
22 approves Illinois' CAAPP.

23 "Emission unit" means any part or activity of a  
24 stationary source that emits or has the potential to emit any  
25 air pollutant. This term is not meant to alter or affect the  
26 definition of the term "unit" for purposes of Title IV of the  
27 Clean Air Act.

28 "Federally enforceable" means enforceable by USEPA.

29 "Final permit action" means the Agency's granting with  
30 conditions, refusal to grant, renewal of, or revision of a  
31 CAAPP permit, the Agency's determination of incompleteness of  
32 a submitted CAAPP application, or the Agency's failure to act  
33 on an application for a permit, permit renewal, or permit  
34 revision within the time specified in paragraph 5(j),



1 subsection 13, or subsection 14 of this Section.

2 "General permit" means a permit issued to cover numerous  
3 similar sources in accordance with subsection 11 of this  
4 Section.

5 "Major source" means a source for which emissions of one  
6 or more air pollutants meet the criteria for major status  
7 pursuant to paragraph 2(c) of this Section.

8 "Maximum achievable control technology" or "MACT" means  
9 the maximum degree of reductions in emissions deemed  
10 achievable under Section 112 of the Clean Air Act.

11 "Owner or operator" means any person who owns, leases,  
12 operates, controls, or supervises a stationary source.

13 "Permit modification" means a revision to a CAAPP permit  
14 that cannot be accomplished under the provisions for  
15 administrative permit amendments under subsection 13 of this  
16 Section.

17 "Permit revision" means a permit modification or  
18 administrative permit amendment.

19 "Phase II" means the period of the national acid rain  
20 program, established under Title IV of the Clean Air Act,  
21 beginning January 1, 2000, and continuing thereafter.

22 "Phase II acid rain permit" means the portion of a CAAPP  
23 permit issued, renewed, modified, or revised by the Agency  
24 during Phase II for an affected source for acid deposition.

25 "Potential to emit" means the maximum capacity of a  
26 stationary source to emit any air pollutant under its  
27 physical and operational design. Any physical or operational  
28 limitation on the capacity of a source to emit an air  
29 pollutant, including air pollution control equipment and  
30 restrictions on hours of operation or on the type or amount  
31 of material combusted, stored, or processed, shall be treated  
32 as part of its design if the limitation is enforceable by  
33 USEPA. This definition does not alter or affect the use of  
34 this term for any other purposes under the Clean Air Act, or

1 the term "capacity factor" as used in Title IV of the Clean  
2 Air Act or the regulations promulgated thereunder.

3 "Preconstruction Permit" or "Construction Permit" means a  
4 permit which is to be obtained prior to commencing or  
5 beginning actual construction or modification of a source or  
6 emissions unit.

7 "Proposed CAAPP permit" means the version of a CAAPP  
8 permit that the Agency proposes to issue and forwards to  
9 USEPA for review in compliance with applicable requirements  
10 of the Act and regulations promulgated thereunder.

11 "Regulated air pollutant" means the following:

12 (1) Nitrogen oxides (NOx) or any volatile organic  
13 compound.

14 (2) Any pollutant for which a national ambient air  
15 quality standard has been promulgated.

16 (3) Any pollutant that is subject to any standard  
17 promulgated under Section 111 of the Clean Air Act.

18 (4) Any Class I or II substance subject to a  
19 standard promulgated under or established by Title VI of  
20 the Clean Air Act.

21 (5) Any pollutant subject to a standard promulgated  
22 under Section 112 or other requirements established under  
23 Section 112 of the Clean Air Act, including Sections  
24 112(g), (j) and (r).

25 (i) Any pollutant subject to requirements  
26 under Section 112(j) of the Clean Air Act. Any  
27 pollutant listed under Section 112(b) for which the  
28 subject source would be major shall be considered to  
29 be regulated 18 months after the date on which USEPA  
30 was required to promulgate an applicable standard  
31 pursuant to Section 112(e) of the Clean Air Act, if  
32 USEPA fails to promulgate such standard.

33 (ii) Any pollutant for which the requirements  
34 of Section 112(g)(2) of the Clean Air Act have been

1 met, but only with respect to the individual source  
2 subject to Section 112(g)(2) requirement.

3 "Renewal" means the process by which a permit is reissued  
4 at the end of its term.

5 "Responsible official" means one of the following:

6 (1) For a corporation: a president, secretary,  
7 treasurer, or vice-president of the corporation in charge  
8 of a principal business function, or any other person who  
9 performs similar policy or decision-making functions for  
10 the corporation, or a duly authorized representative of  
11 such person if the representative is responsible for the  
12 overall operation of one or more manufacturing,  
13 production, or operating facilities applying for or  
14 subject to a permit and either (i) the facilities employ  
15 more than 250 persons or have gross annual sales or  
16 expenditures exceeding \$25 million (in second quarter  
17 1980 dollars), or (ii) the delegation of authority to  
18 such representative is approved in advance by the Agency.

19 (2) For a partnership or sole proprietorship: a  
20 general partner or the proprietor, respectively, or in  
21 the case of a partnership in which all of the partners  
22 are corporations, a duly authorized representative of the  
23 partnership if the representative is responsible for the  
24 overall operation of one or more manufacturing,  
25 production, or operating facilities applying for or  
26 subject to a permit and either (i) the facilities employ  
27 more than 250 persons or have gross annual sales or  
28 expenditures exceeding \$25 million (in second quarter  
29 1980 dollars), or (ii) the delegation of authority to  
30 such representative is approved in advance by the Agency.

31 (3) For a municipality, State, Federal, or other  
32 public agency: either a principal executive officer or  
33 ranking elected official. For the purposes of this part,  
34 a principal executive officer of a Federal agency

1 includes the chief executive officer having  
2 responsibility for the overall operations of a principal  
3 geographic unit of the agency (e.g., a Regional  
4 Administrator of USEPA).

5 (4) For affected sources for acid deposition:

6 (i) The designated representative shall be the  
7 "responsible official" in so far as actions,  
8 standards, requirements, or prohibitions under Title  
9 IV of the Clean Air Act or the regulations  
10 promulgated thereunder are concerned.

11 (ii) The designated representative may also be  
12 the "responsible official" for any other purposes  
13 with respect to air pollution control.

14 "Section 502(b)(10) changes" means changes that  
15 contravene express permit terms. "Section 502(b)(10) changes"  
16 do not include changes that would violate applicable  
17 requirements or contravene federally enforceable permit terms  
18 or conditions that are monitoring (including test methods),  
19 recordkeeping, reporting, or compliance certification  
20 requirements.

21 "Solid waste incineration unit" means a distinct  
22 operating unit of any facility which combusts any solid waste  
23 material from commercial or industrial establishments or the  
24 general public (including single and multiple residences,  
25 hotels, and motels). The term does not include incinerators  
26 or other units required to have a permit under Section 3005  
27 of the Solid Waste Disposal Act. The term also does not  
28 include (A) materials recovery facilities (including primary  
29 or secondary smelters) which combust waste for the primary  
30 purpose of recovering metals, (B) qualifying small power  
31 production facilities, as defined in Section 3(17)(C) of the  
32 Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying  
33 cogeneration facilities, as defined in Section 3(18)(B) of  
34 the Federal Power Act (16 U.S.C. 796(18)(B)), which burn

1 homogeneous waste (such as units which burn tires or used  
2 oil, but not including refuse-derived fuel) for the  
3 production of electric energy or in the case of qualifying  
4 cogeneration facilities which burn homogeneous waste for the  
5 production of electric energy and steam or forms of useful  
6 energy (such as heat) which are used for industrial,  
7 commercial, heating or cooling purposes, or (C) air curtain  
8 incinerators provided that such incinerators only burn wood  
9 wastes, yard waste and clean lumber and that such air curtain  
10 incinerators comply with opacity limitations to be  
11 established by the USEPA by rule.

12 "Source" means any stationary source (or any group of  
13 stationary sources) that are located on one or more  
14 contiguous or adjacent properties that are under common  
15 control of the same person (or persons under common control)  
16 and that belongs to a single major industrial grouping. For  
17 the purposes of defining "source," a stationary source or  
18 group of stationary sources shall be considered part of a  
19 single major industrial grouping if all of the pollutant  
20 emitting activities at such source or group of sources  
21 located on contiguous or adjacent properties and under common  
22 control belong to the same Major Group (i.e., all have the  
23 same two-digit code) as described in the Standard Industrial  
24 Classification Manual, 1987, or such pollutant emitting  
25 activities at a stationary source (or group of stationary  
26 sources) located on contiguous or adjacent properties and  
27 under common control constitute a support facility. The  
28 determination as to whether any group of stationary sources  
29 are located on contiguous or adjacent properties, and/or are  
30 under common control, and/or whether the pollutant emitting  
31 activities at such group of stationary sources constitute a  
32 support facility shall be made on a case by case basis.

33 "Stationary source" means any building, structure,  
34 facility, or installation that emits or may emit any

1 regulated air pollutant or any pollutant listed under Section  
2 112(b) of the Clean Air Act.

3 "Support facility" means any stationary source (or group  
4 of stationary sources) that conveys, stores, or otherwise  
5 assists to a significant extent in the production of a  
6 principal product at another stationary source (or group of  
7 stationary sources). A support facility shall be considered  
8 to be part of the same source as the stationary source (or  
9 group of stationary sources) that it supports regardless of  
10 the 2-digit Standard Industrial Classification code for the  
11 support facility.

12 "USEPA" means the Administrator of the United States  
13 Environmental Protection Agency (USEPA) or a person  
14 designated by the Administrator.

15 1.1. Exclusion From the CAAPP.

16 a. An owner or operator of a source which  
17 determines that the source could be excluded from the  
18 CAAPP may seek such exclusion prior to the date that the  
19 CAAPP application for the source is due but in no case  
20 later than 9 months after the effective date of the CAAPP  
21 through the imposition of federally enforceable  
22 conditions limiting the "potential to emit" of the source  
23 to a level below the major source threshold for that  
24 source as described in paragraph 2(c) of this Section,  
25 within a State operating permit issued pursuant to  
26 Section 39(a) of this Act. After such date, an exclusion  
27 from the CAAPP may be sought under paragraph 3(c) of this  
28 Section.

29 b. An owner or operator of a source seeking  
30 exclusion from the CAAPP pursuant to paragraph (a) of  
31 this subsection must submit a permit application  
32 consistent with the existing State permit program which  
33 specifically requests such exclusion through the  
34 imposition of such federally enforceable conditions.

1           c. Upon such request, if the Agency determines that  
2 the owner or operator of a source has met the  
3 requirements for exclusion pursuant to paragraph (a) of  
4 this subsection and other applicable requirements for  
5 permit issuance under Section 39(a) of this Act, the  
6 Agency shall issue a State operating permit for such  
7 source under Section 39(a) of this Act, as amended, and  
8 regulations promulgated thereunder with federally  
9 enforceable conditions limiting the "potential to emit"  
10 of the source to a level below the major source threshold  
11 for that source as described in paragraph 2(c) of this  
12 Section.

13           d. The Agency shall provide an owner or operator of  
14 a source which may be excluded from the CAAPP pursuant to  
15 this subsection with reasonable notice that the owner or  
16 operator may seek such exclusion.

17           e. The Agency shall provide such sources with the  
18 necessary permit application forms.

19           2. Applicability.

20           a. Sources subject to this Section shall include:

21               i. Any major source as defined in paragraph  
22 (c) of this subsection.

23               ii. Any source subject to a standard or other  
24 requirements promulgated under Section 111 (New  
25 Source Performance Standards) or Section 112  
26 (Hazardous Air Pollutants) of the Clean Air Act,  
27 except that a source is not required to obtain a  
28 permit solely because it is subject to regulations  
29 or requirements under Section 112(r) of the Clean  
30 Air Act.

31               iii. Any affected source for acid deposition,  
32 as defined in subsection 1 of this Section.

33               iv. Any other source subject to this Section  
34 under the Clean Air Act or regulations promulgated

1           thereunder, or applicable Board regulations.

2           b. Sources exempted from this Section shall  
3 include:

4           i. All sources listed in paragraph (a) of this  
5 subsection which are not major sources, affected  
6 sources for acid deposition or solid waste  
7 incineration units required to obtain a permit  
8 pursuant to Section 129(e) of the Clean Air Act,  
9 until the source is required to obtain a CAAPP  
10 permit pursuant to the Clean Air Act or regulations  
11 promulgated thereunder.

12           ii. Nonmajor sources subject to a standard or  
13 other requirements subsequently promulgated by USEPA  
14 under Section 111 or 112 of the Clean Air Act which  
15 are determined by USEPA to be exempt at the time a  
16 new standard is promulgated.

17           iii. All sources and source categories that  
18 would be required to obtain a permit solely because  
19 they are subject to Part 60, Subpart AAA - Standards  
20 of Performance for New Residential Wood Heaters (40  
21 CFR Part 60).

22           iv. All sources and source categories that  
23 would be required to obtain a permit solely because  
24 they are subject to Part 61, Subpart M - National  
25 Emission Standard for Hazardous Air Pollutants for  
26 Asbestos, Section 61.145 (40 CFR Part 61).

27           v. Any other source categories exempted by  
28 USEPA regulations pursuant to Section 502(a) of the  
29 Clean Air Act.

30           c. For purposes of this Section the term "major  
31 source" means any source that is:

32           i. A major source under Section 112 of the  
33 Clean Air Act, which is defined as:

34           A. For pollutants other than



1 radionuclides, any stationary source or group  
2 of stationary sources located within a  
3 contiguous area and under common control that  
4 emits or has the potential to emit, in the  
5 aggregate, 10 tons per year (tpy) or more of  
6 any hazardous air pollutant which has been  
7 listed pursuant to Section 112(b) of the Clean  
8 Air Act, 25 tpy or more of any combination of  
9 such hazardous air pollutants, or such lesser  
10 quantity as USEPA may establish by rule.  
11 Notwithstanding the preceding sentence,  
12 emissions from any oil or gas exploration or  
13 production well (with its associated equipment)  
14 and emissions from any pipeline compressor or  
15 pump station shall not be aggregated with  
16 emissions from other similar units, whether or  
17 not such units are in a contiguous area or  
18 under common control, to determine whether such  
19 stations are major sources.

20 B. For radionuclides, "major source"  
21 shall have the meaning specified by the USEPA  
22 by rule.

23 ii. A major stationary source of air  
24 pollutants, as defined in Section 302 of the Clean  
25 Air Act, that directly emits or has the potential to  
26 emit, 100 tpy or more of any air pollutant  
27 (including any major source of fugitive emissions of  
28 any such pollutant, as determined by rule by USEPA).  
29 For purposes of this subsection, "fugitive  
30 emissions" means those emissions which could not  
31 reasonably pass through a stack, chimney, vent, or  
32 other functionally-equivalent opening. The fugitive  
33 emissions of a stationary source shall not be  
34 considered in determining whether it is a major

1 stationary source for the purposes of Section 302(j)  
2 of the Clean Air Act, unless the source belongs to  
3 one of the following categories of stationary  
4 source:

5 A. Coal cleaning plants (with thermal  
6 dryers).

7 B. Kraft pulp mills.

8 C. Portland cement plants.

9 D. Primary zinc smelters.

10 E. Iron and steel mills.

11 F. Primary aluminum ore reduction plants.

12 G. Primary copper smelters.

13 H. Municipal incinerators capable of  
14 charging more than 250 tons of refuse per day.

15 I. Hydrofluoric, sulfuric, or nitric acid  
16 plants.

17 J. Petroleum refineries.

18 K. Lime plants.

19 L. Phosphate rock processing plants.

20 M. Coke oven batteries.

21 N. Sulfur recovery plants.

22 O. Carbon black plants (furnace process).

23 P. Primary lead smelters.

24 Q. Fuel conversion plants.

25 R. Sintering plants.

26 S. Secondary metal production plants.

27 T. Chemical process plants.

28 U. Fossil-fuel boilers (or combination  
29 thereof) totaling more than 250 million British  
30 thermal units per hour heat input.

31 V. Petroleum storage and transfer units  
32 with a total storage capacity exceeding 300,000  
33 barrels.

34 W. Taconite ore processing plants.

1 X. Glass fiber processing plants.

2 Y. Charcoal production plants.

3 Z. Fossil fuel-fired steam electric  
4 plants of more than 250 million British thermal  
5 units per hour heat input.

6 AA. All other stationary source  
7 categories regulated by a standard promulgated  
8 under Section 111 or 112 of the Clean Air Act,  
9 but only with respect to those air pollutants  
10 that have been regulated for that category.

11 BB. Any other stationary source category  
12 designated by USEPA by rule.

13 iii. A major stationary source as defined in  
14 part D of Title I of the Clean Air Act including:

15 A. For ozone nonattainment areas, sources  
16 with the potential to emit 100 tons or more per  
17 year of volatile organic compounds or oxides of  
18 nitrogen in areas classified as "marginal" or  
19 "moderate", 50 tons or more per year in areas  
20 classified as "serious", 25 tons or more per  
21 year in areas classified as "severe", and 10  
22 tons or more per year in areas classified as  
23 "extreme"; except that the references in this  
24 clause to 100, 50, 25, and 10 tons per year of  
25 nitrogen oxides shall not apply with respect to  
26 any source for which USEPA has made a finding,  
27 under Section 182(f)(1) or (2) of the Clean Air  
28 Act, that requirements otherwise applicable to  
29 such source under Section 182(f) of the Clean  
30 Air Act do not apply. Such sources shall  
31 remain subject to the major source criteria of  
32 paragraph 2(c)(ii) of this subsection.

33 B. For ozone transport regions  
34 established pursuant to Section 184 of the

1 Clean Air Act, sources with the potential to  
2 emit 50 tons or more per year of volatile  
3 organic compounds (VOCs).

4 C. For carbon monoxide nonattainment  
5 areas (1) that are classified as "serious", and  
6 (2) in which stationary sources contribute  
7 significantly to carbon monoxide levels as  
8 determined under rules issued by USEPA, sources  
9 with the potential to emit 50 tons or more per  
10 year of carbon monoxide.

11 D. For particulate matter (PM-10)  
12 nonattainment areas classified as "serious",  
13 sources with the potential to emit 70 tons or  
14 more per year of PM-10.

15 3. Agency Authority To Issue CAAPP Permits and Federally  
16 Enforceable State Operating Permits.

17 a. The Agency shall issue CAAPP permits under this  
18 Section consistent with the Clean Air Act and regulations  
19 promulgated thereunder and this Act and regulations  
20 promulgated thereunder.

21 b. The Agency shall issue CAAPP permits for fixed  
22 terms of 5 years, except CAAPP permits issued for solid  
23 waste incineration units combusting municipal waste which  
24 shall be issued for fixed terms of 12 years and except  
25 CAAPP permits for affected sources for acid deposition  
26 which shall be issued for initial terms to expire on  
27 December 31, 1999, and for fixed terms of 5 years  
28 thereafter.

29 c. The Agency shall have the authority to issue a  
30 State operating permit for a source under Section 39(a)  
31 of this Act, as amended, and regulations promulgated  
32 thereunder, which includes federally enforceable  
33 conditions limiting the "potential to emit" of the source  
34 to a level below the major source threshold for that

1 source as described in paragraph 2(c) of this Section,  
2 thereby excluding the source from the CAAPP, when  
3 requested by the applicant pursuant to paragraph 5(u) of  
4 this Section. The public notice requirements of this  
5 Section applicable to CAAPP permits shall also apply to  
6 the initial issuance of permits under this paragraph.

7 d. For purposes of this Act, a permit issued by  
8 USEPA under Section 505 of the Clean Air Act, as now and  
9 hereafter amended, shall be deemed to be a permit issued  
10 by the Agency pursuant to Section 39.5 of this Act.

11 4. Transition.

12 a. An owner or operator of a CAAPP source shall not  
13 be required to renew an existing State operating permit  
14 for any emission unit at such CAAPP source once a CAAPP  
15 application timely submitted prior to expiration of the  
16 State operating permit has been deemed complete. For  
17 purposes other than permit renewal, the obligation upon  
18 the owner or operator of a CAAPP source to obtain a State  
19 operating permit is not removed upon submittal of the  
20 complete CAAPP permit application. An owner or operator  
21 of a CAAPP source seeking to make a modification to a  
22 source prior to the issuance of its CAAPP permit shall be  
23 required to obtain a construction and/or operating permit  
24 as required for such modification in accordance with the  
25 State permit program under Section 39(a) of this Act, as  
26 amended, and regulations promulgated thereunder. The  
27 application for such construction and/or operating permit  
28 shall be considered an amendment to the CAAPP application  
29 submitted for such source.

30 b. An owner or operator of a CAAPP source shall  
31 continue to operate in accordance with the terms and  
32 conditions of its applicable State operating permit  
33 notwithstanding the expiration of the State operating  
34 permit until the source's CAAPP permit has been issued.

1           c. An owner or operator of a CAAPP source shall  
2 submit its initial CAAPP application to the Agency no  
3 later than 12 months after the effective date of the  
4 CAAPP. The Agency may request submittal of initial CAAPP  
5 applications during this 12 month period according to a  
6 schedule set forth within Agency procedures, however, in  
7 no event shall the Agency require such submittal earlier  
8 than 3 months after such effective date of the CAAPP. An  
9 owner or operator may voluntarily submit its initial  
10 CAAPP application prior to the date required within this  
11 paragraph or applicable procedures, if any, subsequent to  
12 the date the Agency submits the CAAPP to USEPA for  
13 approval.

14           d. The Agency shall act on initial CAAPP  
15 applications in accordance with subsection 5(j) of this  
16 Section.

17           e. For purposes of this Section, the term "initial  
18 CAAPP application" shall mean the first CAAPP application  
19 submitted for a source existing as of the effective date  
20 of the CAAPP.

21           f. The Agency shall provide owners or operators of  
22 CAAPP sources with at least three months advance notice  
23 of the date on which their applications are required to  
24 be submitted. In determining which sources shall be  
25 subject to early submittal, the Agency shall include  
26 among its considerations the complexity of the permit  
27 application, and the burden that such early submittal  
28 will have on the source.

29           g. The CAAPP permit shall upon becoming effective  
30 supersede the State operating permit.

31           h. The Agency shall have the authority to adopt  
32 procedural rules, in accordance with the Illinois  
33 Administrative Procedure Act, as the Agency deems  
34 necessary, to implement this subsection.

1 5. Applications and Completeness.

2 a. An owner or operator of a CAAPP source shall  
3 submit its complete CAAPP application consistent with the  
4 Act and applicable regulations.

5 b. An owner or operator of a CAAPP source shall  
6 submit a single complete CAAPP application covering all  
7 emission units at that source.

8 c. To be deemed complete, a CAAPP application must  
9 provide all information, as requested in Agency  
10 application forms, sufficient to evaluate the subject  
11 source and its application and to determine all  
12 applicable requirements, pursuant to the Clean Air Act,  
13 and regulations thereunder, this Act and regulations  
14 thereunder. Such Agency application forms shall be  
15 finalized and made available prior to the date on which  
16 any CAAPP application is required.

17 d. An owner or operator of a CAAPP source shall  
18 submit, as part of its complete CAAPP application, a  
19 compliance plan, including a schedule of compliance,  
20 describing how each emission unit will comply with all  
21 applicable requirements. Any such schedule of compliance  
22 shall be supplemental to, and shall not sanction  
23 noncompliance with, the applicable requirements on which  
24 it is based.

25 e. Each submitted CAAPP application shall be  
26 certified for truth, accuracy, and completeness by a  
27 responsible official in accordance with applicable  
28 regulations.

29 f. The Agency shall provide notice to a CAAPP  
30 applicant as to whether a submitted CAAPP application is  
31 complete. Unless the Agency notifies the applicant of  
32 incompleteness, within 60 days of receipt of the CAAPP  
33 application, the application shall be deemed complete.  
34 The Agency may request additional information as needed

1 to make the completeness determination. The Agency may  
2 to the extent practicable provide the applicant with a  
3 reasonable opportunity to correct deficiencies prior to a  
4 final determination of completeness.

5 g. If after the determination of completeness the  
6 Agency finds that additional information is necessary to  
7 evaluate or take final action on the CAAPP application,  
8 the Agency may request in writing such information from  
9 the source with a reasonable deadline for response.

10 h. If the owner or operator of a CAAPP source  
11 submits a timely and complete CAAPP application, the  
12 source's failure to have a CAAPP permit shall not be a  
13 violation of this Section until the Agency takes final  
14 action on the submitted CAAPP application, provided,  
15 however, where the applicant fails to submit the  
16 requested information under paragraph 5(g) within the  
17 time frame specified by the Agency, this protection shall  
18 cease to apply.

19 i. Any applicant who fails to submit any relevant  
20 facts necessary to evaluate the subject source and its  
21 CAAPP application or who has submitted incorrect  
22 information in a CAAPP application shall, upon becoming  
23 aware of such failure or incorrect submittal, submit  
24 supplementary facts or correct information to the Agency.  
25 In addition, an applicant shall provide to the Agency  
26 additional information as necessary to address any  
27 requirements which become applicable to the source  
28 subsequent to the date the applicant submitted its  
29 complete CAAPP application but prior to release of the  
30 draft CAAPP permit.

31 j. The Agency shall issue or deny the CAAPP permit  
32 within 18 months after the date of receipt of the  
33 complete CAAPP application, with the following  
34 exceptions: (i) permits for affected sources for acid



1 deposition shall be issued or denied within 6 months  
2 after receipt of a complete application in accordance  
3 with subsection 17 of this Section; (ii) the Agency shall  
4 act on initial CAAPP applications within 24 months after  
5 the date of receipt of the complete CAAPP application;  
6 (iii) the Agency shall act on complete applications  
7 containing early reduction demonstrations under Section  
8 112(i)(5) of the Clean Air Act within 9 months of receipt  
9 of the complete CAAPP application.

10 Where the Agency does not take final action on the  
11 permit within the required time period, the permit shall  
12 not be deemed issued; rather, the failure to act shall be  
13 treated as a final permit action for purposes of judicial  
14 review pursuant to Sections 40.2 and 41 of this Act.

15 k. The submittal of a complete CAAPP application  
16 shall not affect the requirement that any source have a  
17 preconstruction permit under Title I of the Clean Air  
18 Act.

19 l. Unless a timely and complete renewal application  
20 has been submitted consistent with this subsection, a  
21 CAAPP source operating upon the expiration of its CAAPP  
22 permit shall be deemed to be operating without a CAAPP  
23 permit. Such operation is prohibited under this Act.

24 m. Permits being renewed shall be subject to the  
25 same procedural requirements, including those for public  
26 participation and federal review and objection, that  
27 apply to original permit issuance.

28 n. For purposes of permit renewal, a timely  
29 application is one that is submitted no less than 9  
30 months prior to the date of permit expiration.

31 o. The terms and conditions of a CAAPP permit shall  
32 remain in effect until the issuance of a CAAPP renewal  
33 permit provided a timely and complete CAAPP application  
34 has been submitted.

1           p. The owner or operator of a CAAPP source seeking  
2 a permit shield pursuant to paragraph 7(j) of this  
3 Section shall request such permit shield in the CAAPP  
4 application regarding that source.

5           q. The Agency shall make available to the public  
6 all documents submitted by the applicant to the Agency,  
7 including each CAAPP application, compliance plan  
8 (including the schedule of compliance), and emissions or  
9 compliance monitoring report, with the exception of  
10 information entitled to confidential treatment pursuant  
11 to Section 7 of this Act.

12           r. The Agency shall use the standardized forms  
13 required under Title IV of the Clean Air Act and  
14 regulations promulgated thereunder for affected sources  
15 for acid deposition.

16           s. An owner or operator of a CAAPP source may  
17 include within its CAAPP application a request for  
18 permission to operate during a startup, malfunction, or  
19 breakdown consistent with applicable Board regulations.

20           t. An owner or operator of a CAAPP source, in order  
21 to utilize the operational flexibility provided under  
22 paragraph 7(l) of this Section, must request such use and  
23 provide the necessary information within its CAAPP  
24 application.

25           u. An owner or operator of a CAAPP source which  
26 seeks exclusion from the CAAPP through the imposition of  
27 federally enforceable conditions, pursuant to paragraph  
28 3(c) of this Section, must request such exclusion within  
29 a CAAPP application submitted consistent with this  
30 subsection on or after the date that the CAAPP  
31 application for the source is due. Prior to such date,  
32 but in no case later than 9 months after the effective  
33 date of the CAAPP, such owner or operator may request the  
34 imposition of federally enforceable conditions pursuant

1 to paragraph 1.1(b) of this Section.

2 v. CAAPP applications shall contain accurate  
3 information on allowable emissions to implement the fee  
4 provisions of subsection 18 of this Section.

5 w. An owner or operator of a CAAPP source shall  
6 submit within its CAAPP application emissions information  
7 regarding all regulated air pollutants emitted at that  
8 source consistent with applicable Agency procedures.  
9 Emissions information regarding insignificant activities  
10 or emission levels, as determined by the Agency pursuant  
11 to Board regulations, may be submitted as a list within  
12 the CAAPP application. The Agency shall propose  
13 regulations to the Board defining insignificant  
14 activities or emission levels, consistent with federal  
15 regulations, if any, no later than 18 months after the  
16 effective date of this amendatory Act of 1992, consistent  
17 with Section 112(n)(1) of the Clean Air Act. The Board  
18 shall adopt final regulations defining insignificant  
19 activities or emission levels no later than 9 months  
20 after the date of the Agency's proposal.

21 x. The owner or operator of a new CAAPP source  
22 shall submit its complete CAAPP application consistent  
23 with this subsection within 12 months after commencing  
24 operation of such source. The owner or operator of an  
25 existing source that has been excluded from the  
26 provisions of this Section under subsection 1.1 or  
27 subsection 3(c) of this Section and that becomes subject  
28 to the CAAPP solely due to a change in operation at the  
29 source shall submit its complete CAAPP application  
30 consistent with this subsection at least 180 days before  
31 commencing operation in accordance with the change in  
32 operation.

33 y. The Agency shall have the authority to adopt  
34 procedural rules, in accordance with the Illinois

1 Administrative Procedure Act, as the Agency deems  
2 necessary to implement this subsection.

3 6. Prohibitions.

4 a. It shall be unlawful for any person to violate  
5 any terms or conditions of a permit issued under this  
6 Section, to operate any CAAPP source except in compliance  
7 with a permit issued by the Agency under this Section or  
8 to violate any other applicable requirements. All terms  
9 and conditions of a permit issued under this Section are  
10 enforceable by USEPA and citizens under the Clean Air  
11 Act, except those, if any, that are specifically  
12 designated as not being federally enforceable in the  
13 permit pursuant to paragraph 7(m) of this Section.

14 b. After the applicable CAAPP permit or renewal  
15 application submittal date, as specified in subsection 5  
16 of this Section, no person shall operate a CAAPP source  
17 without a CAAPP permit unless the complete CAAPP permit  
18 or renewal application for such source has been timely  
19 submitted to the Agency.

20 c. No owner or operator of a CAAPP source shall  
21 cause or threaten or allow the continued operation of an  
22 emission source during malfunction or breakdown of the  
23 emission source or related air pollution control  
24 equipment if such operation would cause a violation of  
25 the standards or limitations applicable to the source,  
26 unless the CAAPP permit granted to the source provides  
27 for such operation consistent with this Act and  
28 applicable Board regulations.

29 7. Permit Content.

30 a. All CAAPP permits shall contain emission  
31 limitations and standards and other enforceable terms and  
32 conditions, including but not limited to operational  
33 requirements, and schedules for achieving compliance at

1 the earliest reasonable date, which are or will be  
2 required to accomplish the purposes and provisions of  
3 this Act and to assure compliance with all applicable  
4 requirements.

5 b. The Agency shall include among such conditions  
6 applicable monitoring, reporting, record keeping and  
7 compliance certification requirements, as authorized by  
8 paragraphs d, e, and f of this subsection, that the  
9 Agency deems necessary to assure compliance with the  
10 Clean Air Act, the regulations promulgated thereunder,  
11 this Act, and applicable Board regulations. When  
12 monitoring, reporting, record keeping, and compliance  
13 certification requirements are specified within the Clean  
14 Air Act, regulations promulgated thereunder, this Act, or  
15 applicable regulations, such requirements shall be  
16 included within the CAAPP permit. The Board shall have  
17 authority to promulgate additional regulations where  
18 necessary to accomplish the purposes of the Clean Air  
19 Act, this Act, and regulations promulgated thereunder.

20 c. The Agency shall assure, within such conditions,  
21 the use of terms, test methods, units, averaging periods,  
22 and other statistical conventions consistent with the  
23 applicable emission limitations, standards, and other  
24 requirements contained in the permit.

25 d. To meet the requirements of this subsection with  
26 respect to monitoring, the permit shall:

27 i. Incorporate and identify all applicable  
28 emissions monitoring and analysis procedures or test  
29 methods required under the Clean Air Act,  
30 regulations promulgated thereunder, this Act, and  
31 applicable Board regulations, including any  
32 procedures and methods promulgated by USEPA pursuant  
33 to Section 504(b) or Section 114 (a)(3) of the Clean  
34 Air Act.

1           ii. Where the applicable requirement does not  
2 require periodic testing or instrumental or  
3 noninstrumental monitoring (which may consist of  
4 recordkeeping designed to serve as monitoring),  
5 require periodic monitoring sufficient to yield  
6 reliable data from the relevant time period that is  
7 representative of the source's compliance with the  
8 permit, as reported pursuant to paragraph (f) of  
9 this subsection. The Agency may determine that  
10 recordkeeping requirements are sufficient to meet  
11 the requirements of this subparagraph.

12           iii. As necessary, specify requirements  
13 concerning the use, maintenance, and when  
14 appropriate, installation of monitoring equipment or  
15 methods.

16           e. To meet the requirements of this subsection with  
17 respect to record keeping, the permit shall incorporate  
18 and identify all applicable recordkeeping requirements  
19 and require, where applicable, the following:

20           i. Records of required monitoring information  
21 that include the following:

22               A. The date, place and time of sampling  
23 or measurements.

24               B. The date(s) analyses were performed.

25               C. The company or entity that performed  
26 the analyses.

27               D. The analytical techniques or methods  
28 used.

29               E. The results of such analyses.

30               F. The operating conditions as existing  
31 at the time of sampling or measurement.

32           ii. Retention of records of all monitoring  
33 data and support information for a period of at  
34 least 5 years from the date of the monitoring

1 sample, measurement, report, or application.  
2 Support information includes all calibration and  
3 maintenance records, original strip-chart recordings  
4 for continuous monitoring instrumentation, and  
5 copies of all reports required by the permit.

6 f. To meet the requirements of this subsection with  
7 respect to reporting, the permit shall incorporate and  
8 identify all applicable reporting requirements and  
9 require the following:

10 i. Submittal of reports of any required  
11 monitoring every 6 months. More frequent submittals  
12 may be requested by the Agency if such submittals  
13 are necessary to assure compliance with this Act or  
14 regulations promulgated by the Board thereunder.  
15 All instances of deviations from permit requirements  
16 must be clearly identified in such reports. All  
17 required reports must be certified by a responsible  
18 official consistent with subsection 5 of this  
19 Section.

20 ii. Prompt reporting of deviations from permit  
21 requirements, including those attributable to upset  
22 conditions as defined in the permit, the probable  
23 cause of such deviations, and any corrective actions  
24 or preventive measures taken.

25 g. Each CAAPP permit issued under subsection 10 of  
26 this Section shall include a condition prohibiting  
27 emissions exceeding any allowances that the source  
28 lawfully holds under Title IV of the Clean Air Act or the  
29 regulations promulgated thereunder, consistent with  
30 subsection 17 of this Section and applicable regulations,  
31 if any.

32 h. All CAAPP permits shall state that, where  
33 another applicable requirement of the Clean Air Act is  
34 more stringent than any applicable requirement of

1 regulations promulgated under Title IV of the Clean Air  
2 Act, both provisions shall be incorporated into the  
3 permit and shall be State and federally enforceable.

4 i. Each CAAPP permit issued under subsection 10 of  
5 this Section shall include a severability clause to  
6 ensure the continued validity of the various permit  
7 requirements in the event of a challenge to any portions  
8 of the permit.

9 j. The following shall apply with respect to owners  
10 or operators requesting a permit shield:

11 i. The Agency shall include in a CAAPP permit,  
12 when requested by an applicant pursuant to paragraph  
13 5(p) of this Section, a provision stating that  
14 compliance with the conditions of the permit shall  
15 be deemed compliance with applicable requirements  
16 which are applicable as of the date of release of  
17 the proposed permit, provided that:

18 A. The applicable requirement is  
19 specifically identified within the permit; or

20 B. The Agency in acting on the CAAPP  
21 application or revision determines in writing  
22 that other requirements specifically identified  
23 are not applicable to the source, and the  
24 permit includes that determination or a concise  
25 summary thereof.

26 ii. The permit shall identify the requirements  
27 for which the source is shielded. The shield shall  
28 not extend to applicable requirements which are  
29 promulgated after the date of release of the  
30 proposed permit unless the permit has been modified  
31 to reflect such new requirements.

32 iii. A CAAPP permit which does not expressly  
33 indicate the existence of a permit shield shall not  
34 provide such a shield.



1           iv. Nothing in this paragraph or in a CAAPP  
2 permit shall alter or affect the following:

3           A. The provisions of Section 303  
4 (emergency powers) of the Clean Air Act,  
5 including USEPA's authority under that section.

6           B. The liability of an owner or operator  
7 of a source for any violation of applicable  
8 requirements prior to or at the time of permit  
9 issuance.

10          C. The applicable requirements of the  
11 acid rain program consistent with Section  
12 408(a) of the Clean Air Act.

13          D. The ability of USEPA to obtain  
14 information from a source pursuant to Section  
15 114 (inspections, monitoring, and entry) of the  
16 Clean Air Act.

17          k. Each CAAPP permit shall include an emergency  
18 provision providing an affirmative defense of emergency  
19 to an action brought for noncompliance with  
20 technology-based emission limitations under a CAAPP  
21 permit if the following conditions are met through  
22 properly signed, contemporaneous operating logs, or other  
23 relevant evidence:

24           i. An emergency occurred and the permittee can  
25 identify the cause(s) of the emergency.

26           ii. The permitted facility was at the time  
27 being properly operated.

28           iii. The permittee submitted notice of the  
29 emergency to the Agency within 2 working days of the  
30 time when emission limitations were exceeded due to  
31 the emergency. This notice must contain a detailed  
32 description of the emergency, any steps taken to  
33 mitigate emissions, and corrective actions taken.

34          iv. During the period of the emergency the

1 permittee took all reasonable steps to minimize  
2 levels of emissions that exceeded the emission  
3 limitations, standards, or requirements in the  
4 permit.

5 For purposes of this subsection, "emergency" means  
6 any situation arising from sudden and reasonably  
7 unforeseeable events beyond the control of the source,  
8 such as an act of God, that requires immediate corrective  
9 action to restore normal operation, and that causes the  
10 source to exceed a technology-based emission limitation  
11 under the permit, due to unavoidable increases in  
12 emissions attributable to the emergency. An emergency  
13 shall not include noncompliance to the extent caused by  
14 improperly designed equipment, lack of preventative  
15 maintenance, careless or improper operation, or operation  
16 error.

17 In any enforcement proceeding, the permittee  
18 seeking to establish the occurrence of an emergency has  
19 the burden of proof. This provision is in addition to  
20 any emergency or upset provision contained in any  
21 applicable requirement. This provision does not relieve  
22 a permittee of any reporting obligations under existing  
23 federal or state laws or regulations.

24 1. The Agency shall include in each permit issued  
25 under subsection 10 of this Section:

26 i. Terms and conditions for reasonably  
27 anticipated operating scenarios identified by the  
28 source in its application. The permit terms and  
29 conditions for each such operating scenario shall  
30 meet all applicable requirements and the  
31 requirements of this Section.

32 A. Under this subparagraph, the source  
33 must record in a log at the permitted facility  
34 a record of the scenario under which it is

1 operating contemporaneously with making a  
2 change from one operating scenario to another.

3 B. The permit shield described in  
4 paragraph 7(j) of this Section shall extend to  
5 all terms and conditions under each such  
6 operating scenario.

7 ii. Where requested by an applicant, all terms  
8 and conditions allowing for trading of emissions  
9 increases and decreases between different emission  
10 units at the CAAPP source, to the extent that the  
11 applicable requirements provide for trading of such  
12 emissions increases and decreases without a  
13 case-by-case approval of each emissions trade. Such  
14 terms and conditions:

15 A. Shall include all terms required under  
16 this subsection to determine compliance;

17 B. Must meet all applicable requirements;

18 C. Shall extend the permit shield  
19 described in paragraph 7(j) of this Section to  
20 all terms and conditions that allow such  
21 increases and decreases in emissions.

22 m. The Agency shall specifically designate as not  
23 being federally enforceable under the Clean Air Act any  
24 terms and conditions included in the permit that are not  
25 specifically required under the Clean Air Act or federal  
26 regulations promulgated thereunder. Terms or conditions  
27 so designated shall be subject to all applicable state  
28 requirements, except the requirements of subsection 7  
29 (other than this paragraph, paragraph q of subsection 7,  
30 subsections 8 through 11, and subsections 13 through 16  
31 of this Section. The Agency shall, however, include such  
32 terms and conditions in the CAAPP permit issued to the  
33 source.

34 n. Each CAAPP permit issued under subsection 10 of

1 this Section shall specify and reference the origin of  
2 and authority for each term or condition, and identify  
3 any difference in form as compared to the applicable  
4 requirement upon which the term or condition is based.

5 o. Each CAAPP permit issued under subsection 10 of  
6 this Section shall include provisions stating the  
7 following:

8 i. Duty to comply. The permittee must comply  
9 with all terms and conditions of the CAAPP permit.  
10 Any permit noncompliance constitutes a violation of  
11 the Clean Air Act and the Act, and is grounds for  
12 any or all of the following: enforcement action;  
13 permit termination, revocation and reissuance, or  
14 modification; or denial of a permit renewal  
15 application.

16 ii. Need to halt or reduce activity not a  
17 defense. It shall not be a defense for a permittee  
18 in an enforcement action that it would have been  
19 necessary to halt or reduce the permitted activity  
20 in order to maintain compliance with the conditions  
21 of this permit.

22 iii. Permit actions. The permit may be  
23 modified, revoked, reopened, and reissued, or  
24 terminated for cause in accordance with the  
25 applicable subsections of Section 39.5 of this Act.  
26 The filing of a request by the permittee for a  
27 permit modification, revocation and reissuance, or  
28 termination, or of a notification of planned changes  
29 or anticipated noncompliance does not stay any  
30 permit condition.

31 iv. Property rights. The permit does not  
32 convey any property rights of any sort, or any  
33 exclusive privilege.

34 v. Duty to provide information. The permittee

1 shall furnish to the Agency within a reasonable time  
2 specified by the Agency any information that the  
3 Agency may request in writing to determine whether  
4 cause exists for modifying, revoking and reissuing,  
5 or terminating the permit or to determine compliance  
6 with the permit. Upon request, the permittee shall  
7 also furnish to the Agency copies of records  
8 required to be kept by the permit or, for  
9 information claimed to be confidential, the  
10 permittee may furnish such records directly to USEPA  
11 along with a claim of confidentiality.

12 vi. Duty to pay fees. The permittee must pay  
13 fees to the Agency consistent with the fee schedule  
14 approved pursuant to subsection 18 of this Section,  
15 and submit any information relevant thereto.

16 vii. Emissions trading. No permit revision  
17 shall be required for increases in emissions allowed  
18 under any approved economic incentives, marketable  
19 permits, emissions trading, and other similar  
20 programs or processes for changes that are provided  
21 for in the permit and that are authorized by the  
22 applicable requirement.

23 p. Each CAAPP permit issued under subsection 10 of  
24 this Section shall contain the following elements with  
25 respect to compliance:

26 i. Compliance certification, testing,  
27 monitoring, reporting, and record keeping  
28 requirements sufficient to assure compliance with  
29 the terms and conditions of the permit. Any  
30 document (including reports) required by a CAAPP  
31 permit shall contain a certification by a  
32 responsible official that meets the requirements of  
33 subsection 5 of this Section and applicable  
34 regulations.

1           ii. Inspection and entry requirements that  
2 necessitate that, upon presentation of credentials  
3 and other documents as may be required by law and in  
4 accordance with constitutional limitations, the  
5 permittee shall allow the Agency, or an authorized  
6 representative to perform the following:

7           A. Enter upon the permittee's premises  
8 where a CAAPP source is located or  
9 emissions-related activity is conducted, or  
10 where records must be kept under the conditions  
11 of the permit.

12           B. Have access to and copy, at reasonable  
13 times, any records that must be kept under the  
14 conditions of the permit.

15           C. Inspect at reasonable times any  
16 facilities, equipment (including monitoring and  
17 air pollution control equipment), practices, or  
18 operations regulated or required under the  
19 permit.

20           D. Sample or monitor any substances or  
21 parameters at any location:

22           1. As authorized by the Clean Air  
23 Act, at reasonable times, for the purposes  
24 of assuring compliance with the CAAPP  
25 permit or applicable requirements; or

26           2. As otherwise authorized by this  
27 Act.

28           iii. A schedule of compliance consistent with  
29 subsection 5 of this Section and applicable  
30 regulations.

31           iv. Progress reports consistent with an  
32 applicable schedule of compliance pursuant to  
33 paragraph 5(d) of this Section and applicable  
34 regulations to be submitted semiannually, or more

1 frequently if the Agency determines that such more  
2 frequent submittals are necessary for compliance  
3 with the Act or regulations promulgated by the Board  
4 thereunder. Such progress reports shall contain the  
5 following:

6 A. Required dates for achieving the  
7 activities, milestones, or compliance required  
8 by the schedule of compliance and dates when  
9 such activities, milestones or compliance were  
10 achieved.

11 B. An explanation of why any dates in the  
12 schedule of compliance were not or will not be  
13 met, and any preventive or corrective measures  
14 adopted.

15 v. Requirements for compliance certification  
16 with terms and conditions contained in the permit,  
17 including emission limitations, standards, or work  
18 practices. Permits shall include each of the  
19 following:

20 A. The frequency (annually or more  
21 frequently as specified in any applicable  
22 requirement or by the Agency pursuant to  
23 written procedures) of submissions of  
24 compliance certifications.

25 B. A means for assessing or monitoring  
26 the compliance of the source with its emissions  
27 limitations, standards, and work practices.

28 C. A requirement that the compliance  
29 certification include the following:

30 1. The identification of each term  
31 or condition contained in the permit that  
32 is the basis of the certification.

33 2. The compliance status.

34 3. Whether compliance was continuous

1 or intermittent.

2 4. The method(s) used for  
3 determining the compliance status of the  
4 source, both currently and over the  
5 reporting period consistent with  
6 subsection 7 of Section 39.5 of the Act.

7 D. A requirement that all compliance  
8 certifications be submitted to USEPA as well as  
9 to the Agency.

10 E. Additional requirements as may be  
11 specified pursuant to Sections 114(a)(3) and  
12 504(b) of the Clean Air Act.

13 F. Other provisions as the Agency may  
14 require.

15 q. If the owner or operator of CAAPP source can  
16 demonstrate in its CAAPP application, including an  
17 application for a significant modification, that an  
18 alternative emission limit would be equivalent to that  
19 contained in the applicable Board regulations, the Agency  
20 shall include the alternative emission limit in the CAAPP  
21 permit, which shall supersede the emission limit set  
22 forth in the applicable Board regulations, and shall  
23 include conditions that insure that the resulting  
24 emission limit is quantifiable, accountable, enforceable,  
25 and based on replicable procedures.

26 8. Public Notice; Affected State Review.

27 a. The Agency shall provide notice to the public,  
28 including an opportunity for public comment and a  
29 hearing, on each draft CAAPP permit for issuance, renewal  
30 or significant modification, subject to Sections 7(a) and  
31 7.1 of this Act.

32 b. The Agency shall prepare a draft CAAPP permit  
33 and a statement that sets forth the legal and factual  
34 basis for the draft CAAPP permit conditions, including



1 references to the applicable statutory or regulatory  
2 provisions. The Agency shall provide this statement to  
3 any person who requests it.

4 c. The Agency shall give notice of each draft CAAPP  
5 permit to the applicant and to any affected State on or  
6 before the time that the Agency has provided notice to  
7 the public, except as otherwise provided in this Act.

8 d. The Agency, as part of its submittal of a  
9 proposed permit to USEPA (or as soon as possible after  
10 the submittal for minor permit modification procedures  
11 allowed under subsection 14 of this Section), shall  
12 notify USEPA and any affected State in writing of any  
13 refusal of the Agency to accept all of the  
14 recommendations for the proposed permit that an affected  
15 State submitted during the public or affected State  
16 review period. The notice shall include the Agency's  
17 reasons for not accepting the recommendations. The  
18 Agency is not required to accept recommendations that are  
19 not based on applicable requirements or the requirements  
20 of this Section.

21 e. The Agency shall make available to the public  
22 any CAAPP permit application, compliance plan (including  
23 the schedule of compliance), CAAPP permit, and emissions  
24 or compliance monitoring report. If an owner or operator  
25 of a CAAPP source is required to submit information  
26 entitled to protection from disclosure under Section 7(a)  
27 or Section 7.1 of this Act, the owner or operator shall  
28 submit such information separately. The requirements of  
29 Section 7(a) or Section 7.1 of this Act shall apply to  
30 such information, which shall not be included in a CAAPP  
31 permit unless required by law. The contents of a CAAPP  
32 permit shall not be entitled to protection under Section  
33 7(a) or Section 7.1 of this Act.

34 f. The Agency shall have the authority to adopt

1 procedural rules, in accordance with the Illinois  
2 Administrative Procedure Act, as the Agency deems  
3 necessary, to implement this subsection.

4 9. USEPA Notice and Objection.

5 a. The Agency shall provide to USEPA for its review  
6 a copy of each CAAPP application (including any  
7 application for permit modification), statement of basis  
8 as provided in paragraph 8(b) of this Section, proposed  
9 CAAPP permit, CAAPP permit, and, if the Agency does not  
10 incorporate any affected State's recommendations on a  
11 proposed CAAPP permit, a written statement of this  
12 decision and its reasons for not accepting the  
13 recommendations, except as otherwise provided in this Act  
14 or by agreement with USEPA. To the extent practicable,  
15 the preceding information shall be provided in computer  
16 readable format compatible with USEPA's national database  
17 management system.

18 b. The Agency shall not issue the proposed CAAPP  
19 permit if USEPA objects in writing within 45 days of  
20 receipt of the proposed CAAPP permit and all necessary  
21 supporting information.

22 c. If USEPA objects in writing to the issuance of  
23 the proposed CAAPP permit within the 45-day period, the  
24 Agency shall respond in writing and may revise and  
25 resubmit the proposed CAAPP permit in response to the  
26 stated objection, to the extent supported by the record,  
27 within 90 days after the date of the objection. Prior to  
28 submitting a revised permit to USEPA, the Agency shall  
29 provide the applicant and any person who participated in  
30 the public comment process, pursuant to subsection 8 of  
31 this Section, with a 10-day period to comment on any  
32 revision which the Agency is proposing to make to the  
33 permit in response to USEPA's objection in accordance  
34 with Agency procedures.

1           d. Any USEPA objection under this subsection,  
2 according to the Clean Air Act, will include a statement  
3 of reasons for the objection and a description of the  
4 terms and conditions that must be in the permit, in order  
5 to adequately respond to the objections. Grounds for a  
6 USEPA objection include the failure of the Agency to:  
7 (1) submit the items and notices required under this  
8 subsection; (2) submit any other information necessary to  
9 adequately review the proposed CAAPP permit; or (3)  
10 process the permit under subsection 8 of this Section  
11 except for minor permit modifications.

12           e. If USEPA does not object in writing to issuance  
13 of a permit under this subsection, any person may  
14 petition USEPA within 60 days after expiration of the  
15 45-day review period to make such objection.

16           f. If the permit has not yet been issued and USEPA  
17 objects to the permit as a result of a petition, the  
18 Agency shall not issue the permit until USEPA's objection  
19 has been resolved. The Agency shall provide a 10-day  
20 comment period in accordance with paragraph c of this  
21 subsection. A petition does not, however, stay the  
22 effectiveness of a permit or its requirements if the  
23 permit was issued after expiration of the 45-day review  
24 period and prior to a USEPA objection.

25           g. If the Agency has issued a permit after  
26 expiration of the 45-day review period and prior to  
27 receipt of a USEPA objection under this subsection in  
28 response to a petition submitted pursuant to paragraph e  
29 of this subsection, the Agency may, upon receipt of an  
30 objection from USEPA, revise and resubmit the permit to  
31 USEPA pursuant to this subsection after providing a  
32 10-day comment period in accordance with paragraph c of  
33 this subsection. If the Agency fails to submit a revised  
34 permit in response to the objection, USEPA shall modify,

1 terminate or revoke the permit. In any case, the source  
2 will not be in violation of the requirement to have  
3 submitted a timely and complete application.

4 h. The Agency shall have the authority to adopt  
5 procedural rules, in accordance with the Illinois  
6 Administrative Procedure Act, as the Agency deems  
7 necessary, to implement this subsection.

8 10. Final Agency Action.

9 a. The Agency shall issue a CAAPP permit, permit  
10 modification, or permit renewal if all of the following  
11 conditions are met:

12 i. The applicant has submitted a complete and  
13 certified application for a permit, permit  
14 modification, or permit renewal consistent with  
15 subsections 5 and 14 of this Section, as applicable,  
16 and applicable regulations.

17 ii. The applicant has submitted with its  
18 complete application an approvable compliance plan,  
19 including a schedule for achieving compliance,  
20 consistent with subsection 5 of this Section and  
21 applicable regulations.

22 iii. The applicant has timely paid the fees  
23 required pursuant to subsection 18 of this Section  
24 and applicable regulations.

25 iv. The Agency has received a complete CAAPP  
26 application and, if necessary, has requested and  
27 received additional information from the applicant  
28 consistent with subsection 5 of this Section and  
29 applicable regulations.

30 v. The Agency has complied with all applicable  
31 provisions regarding public notice and affected  
32 State review consistent with subsection 8 of this  
33 Section and applicable regulations.

34 vi. The Agency has provided a copy of each

1 CAAPP application, or summary thereof, pursuant to  
2 agreement with USEPA and proposed CAAPP permit  
3 required under subsection 9 of this Section to  
4 USEPA, and USEPA has not objected to the issuance of  
5 the permit in accordance with the Clean Air Act and  
6 40 CFR Part 70.

7 b. The Agency shall have the authority to deny a  
8 CAAPP permit, permit modification, or permit renewal if  
9 the applicant has not complied with the requirements of  
10 paragraphs (a)(i)-(a)(iv) of this subsection or if USEPA  
11 objects to its issuance.

12 c. i. Prior to denial of a CAAPP permit, permit  
13 modification, or permit renewal under this Section,  
14 the Agency shall notify the applicant of the  
15 possible denial and the reasons for the denial.

16 ii. Within such notice, the Agency shall  
17 specify an appropriate date by which the applicant  
18 shall adequately respond to the Agency's notice.  
19 Such date shall not exceed 15 days from the date the  
20 notification is received by the applicant. The  
21 Agency may grant a reasonable extension for good  
22 cause shown.

23 iii. Failure by the applicant to adequately  
24 respond by the date specified in the notification or  
25 by any granted extension date shall be grounds for  
26 denial of the permit.

27 For purposes of obtaining judicial review under  
28 Sections 40.2 and 41 of this Act, the Agency shall  
29 provide to USEPA and each applicant, and, upon  
30 request, to affected States, any person who  
31 participated in the public comment process, and any  
32 other person who could obtain judicial review under  
33 Sections 40.2 and 41 of this Act, a copy of each  
34 CAAPP permit or notification of denial pertaining to

1           that party.

2           d. The Agency shall have the authority to adopt  
3 procedural rules, in accordance with the Illinois  
4 Administrative Procedure Act, as the Agency deems  
5 necessary, to implement this subsection.

6           11. General Permits.

7           a. The Agency may issue a general permit covering  
8 numerous similar sources, except for affected sources for  
9 acid deposition unless otherwise provided in regulations  
10 promulgated under Title IV of the Clean Air Act.

11           b. The Agency shall identify, in any general  
12 permit, criteria by which sources may qualify for the  
13 general permit.

14           c. CAAPP sources that would qualify for a general  
15 permit must apply for coverage under the terms of the  
16 general permit or must apply for a CAAPP permit  
17 consistent with subsection 5 of this Section and  
18 applicable regulations.

19           d. The Agency shall comply with the public comment  
20 and hearing provisions of this Section as well as the  
21 USEPA and affected State review procedures prior to  
22 issuance of a general permit.

23           e. When granting a subsequent request by a  
24 qualifying CAAPP source for coverage under the terms of a  
25 general permit, the Agency shall not be required to  
26 repeat the public notice and comment procedures. The  
27 granting of such request shall not be considered a final  
28 permit action for purposes of judicial review.

29           f. The Agency may not issue a general permit to  
30 cover any discrete emission unit at a CAAPP source if  
31 another CAAPP permit covers emission units at the source.

32           g. The Agency shall have the authority to adopt  
33 procedural rules, in accordance with the Illinois  
34 Administrative Procedure Act, as the Agency deems

1 necessary, to implement this subsection.

2 12. Operational Flexibility.

3 a. An owner or operator of a CAAPP source may make  
4 changes at the CAAPP source without requiring a prior  
5 permit revision, consistent with subparagraphs (a) (i)  
6 through (a) (iii) of this subsection, so long as the  
7 changes are not modifications under any provision of  
8 Title I of the Clean Air Act and they do not exceed the  
9 emissions allowable under the permit (whether expressed  
10 therein as a rate of emissions or in terms of total  
11 emissions), provided that the owner or operator of the  
12 CAAPP source provides USEPA and the Agency with written  
13 notification as required below in advance of the proposed  
14 changes, which shall be a minimum of 7 days, unless  
15 otherwise provided by the Agency in applicable  
16 regulations regarding emergencies. The owner or operator  
17 of a CAAPP source and the Agency shall each attach such  
18 notice to their copy of the relevant permit.

19 i. An owner or operator of a CAAPP source may  
20 make Section 502 (b) (10) changes without a permit  
21 revision, if the changes are not modifications under  
22 any provision of Title I of the Clean Air Act and  
23 the changes do not exceed the emissions allowable  
24 under the permit (whether expressed therein as a  
25 rate of emissions or in terms of total emissions).

26 A. For each such change, the written  
27 notification required above shall include a  
28 brief description of the change within the  
29 source, the date on which the change will  
30 occur, any change in emissions, and any permit  
31 term or condition that is no longer applicable  
32 as a result of the change.

33 B. The permit shield described in  
34 paragraph 7(j) of this Section shall not apply

1 to any change made pursuant to this  
2 subparagraph.

3 ii. An owner or operator of a CAAPP source may  
4 trade increases and decreases in emissions in the  
5 CAAPP source, where the applicable implementation  
6 plan provides for such emission trades without  
7 requiring a permit revision. This provision is  
8 available in those cases where the permit does not  
9 already provide for such emissions trading.

10 A. Under this subparagraph (a)(ii), the  
11 written notification required above shall  
12 include such information as may be required by  
13 the provision in the applicable implementation  
14 plan authorizing the emissions trade, including  
15 at a minimum, when the proposed changes will  
16 occur, a description of each such change, any  
17 change in emissions, the permit requirements  
18 with which the source will comply using the  
19 emissions trading provisions of the applicable  
20 implementation plan, and the pollutants emitted  
21 subject to the emissions trade. The notice  
22 shall also refer to the provisions in the  
23 applicable implementation plan with which the  
24 source will comply and provide for the  
25 emissions trade.

26 B. The permit shield described in  
27 paragraph 7(j) of this Section shall not apply  
28 to any change made pursuant to this  
29 subparagraph (a) (ii). Compliance with the  
30 permit requirements that the source will meet  
31 using the emissions trade shall be determined  
32 according to the requirements of the applicable  
33 implementation plan authorizing the emissions  
34 trade.



1           iii. If requested within a CAAPP application,  
2 the Agency shall issue a CAAPP permit which contains  
3 terms and conditions, including all terms required  
4 under subsection 7 of this Section to determine  
5 compliance, allowing for the trading of emissions  
6 increases and decreases at the CAAPP source solely  
7 for the purpose of complying with a  
8 federally-enforceable emissions cap that is  
9 established in the permit independent of otherwise  
10 applicable requirements. The owner or operator of a  
11 CAAPP source shall include in its CAAPP application  
12 proposed replicable procedures and permit terms that  
13 ensure the emissions trades are quantifiable and  
14 enforceable. The permit shall also require  
15 compliance with all applicable requirements.

16           A. Under this subparagraph (a)(iii), the  
17 written notification required above shall state  
18 when the change will occur and shall describe  
19 the changes in emissions that will result and  
20 how these increases and decreases in emissions  
21 will comply with the terms and conditions of  
22 the permit.

23           B. The permit shield described in  
24 paragraph 7(j) of this Section shall extend to  
25 terms and conditions that allow such increases  
26 and decreases in emissions.

27           b. An owner or operator of a CAAPP source may make  
28 changes that are not addressed or prohibited by the  
29 permit, other than those which are subject to any  
30 requirements under Title IV of the Clean Air Act or are  
31 modifications under any provisions of Title I of the  
32 Clean Air Act, without a permit revision, in accordance  
33 with the following requirements:

34           (i) Each such change shall meet all applicable

1 requirements and shall not violate any existing  
2 permit term or condition;

3 (ii) Sources must provide contemporaneous  
4 written notice to the Agency and USEPA of each such  
5 change, except for changes that qualify as  
6 insignificant under provisions adopted by the Agency  
7 or the Board. Such written notice shall describe  
8 each such change, including the date, any change in  
9 emissions, pollutants emitted, and any applicable  
10 requirement that would apply as a result of the  
11 change;

12 (iii) The change shall not qualify for the  
13 shield described in paragraph 7(j) of this Section;  
14 and

15 (iv) The permittee shall keep a record  
16 describing changes made at the source that result in  
17 emissions of a regulated air pollutant subject to an  
18 applicable Clean Air Act requirement, but not  
19 otherwise regulated under the permit, and the  
20 emissions resulting from those changes.

21 c. The Agency shall have the authority to adopt  
22 procedural rules, in accordance with the Illinois  
23 Administrative Procedure Act, as the Agency deems  
24 necessary to implement this subsection.

25 13. Administrative Permit Amendments.

26 a. The Agency shall take final action on a request  
27 for an administrative permit amendment within 60 days of  
28 receipt of the request. Neither notice nor an  
29 opportunity for public and affected State comment shall  
30 be required for the Agency to incorporate such revisions,  
31 provided it designates the permit revisions as having  
32 been made pursuant to this subsection.

33 b. The Agency shall submit a copy of the revised  
34 permit to USEPA.

1           c. For purposes of this Section the term  
2 "administrative permit amendment" shall be defined as: a  
3 permit revision that can accomplish one or more of the  
4 changes described below:

5           i. Corrects typographical errors;

6           ii. Identifies a change in the name, address,  
7 or phone number of any person identified in the  
8 permit, or provides a similar minor administrative  
9 change at the source;

10          iii. Requires more frequent monitoring or  
11 reporting by the permittee;

12          iv. Allows for a change in ownership or  
13 operational control of a source where the Agency  
14 determines that no other change in the permit is  
15 necessary, provided that a written agreement  
16 containing a specific date for transfer of permit  
17 responsibility, coverage, and liability between the  
18 current and new permittees has been submitted to the  
19 Agency;

20          v. Incorporates into the CAAPP permit the  
21 requirements from preconstruction review permits  
22 authorized under a USEPA-approved program, provided  
23 the program meets procedural and compliance  
24 requirements substantially equivalent to those  
25 contained in this Section;

26          vi. Incorporates into the CAAPP permit revised  
27 limitations or other requirements resulting from the  
28 application of an approved economic incentives rule,  
29 a marketable permits rule or generic emissions  
30 trading rule, where these rules have been approved  
31 by USEPA and require changes thereunder to meet  
32 procedural requirements substantially equivalent to  
33 those specified in this Section; or

34          vii. Any other type of change which USEPA has

1           determined as part of the approved CAAPP permit  
2           program to be similar to those included in this  
3           subsection.

4           d. The Agency shall, upon taking final action  
5           granting a request for an administrative permit  
6           amendment, allow coverage by the permit shield in  
7           paragraph 7(j) of this Section for administrative permit  
8           amendments made pursuant to subparagraph (c)(v) of this  
9           subsection which meet the relevant requirements for  
10          significant permit modifications.

11          e. Permit revisions and modifications, including  
12          administrative amendments and automatic amendments  
13          (pursuant to Sections 408(b) and 403(d) of the Clean Air  
14          Act or regulations promulgated thereunder), for purposes  
15          of the acid rain portion of the permit shall be governed  
16          by the regulations promulgated under Title IV of the  
17          Clean Air Act. Owners or operators of affected sources  
18          for acid deposition shall have the flexibility to amend  
19          their compliance plans as provided in the regulations  
20          promulgated under Title IV of the Clean Air Act.

21          f. The CAAPP source may implement the changes  
22          addressed in the request for an administrative permit  
23          amendment immediately upon submittal of the request.

24          g. The Agency shall have the authority to adopt  
25          procedural rules, in accordance with the Illinois  
26          Administrative Procedure Act, as the Agency deems  
27          necessary, to implement this subsection.

28          14. Permit Modifications.

29          a. Minor permit modification procedures.

30                  i. The Agency shall review a permit  
31                  modification using the "minor permit" modification  
32                  procedures only for those permit modifications that:

33                          A. Do not violate any applicable  
34                          requirement;

1           B. Do not involve significant changes to  
2           existing monitoring, reporting, or  
3           recordkeeping requirements in the permit;

4           C. Do not require a case-by-case  
5           determination of an emission limitation or  
6           other standard, or a source-specific  
7           determination of ambient impacts, or a  
8           visibility or increment analysis;

9           D. Do not seek to establish or change a  
10          permit term or condition for which there is no  
11          corresponding underlying requirement and which  
12          avoids an applicable requirement to which the  
13          source would otherwise be subject. Such terms  
14          and conditions include:

15                 1. A federally enforceable emissions  
16                 cap assumed to avoid classification as a  
17                 modification under any provision of Title  
18                 I of the Clean Air Act; and

19                 2. An alternative emissions limit  
20                 approved pursuant to regulations  
21                 promulgated under Section 112(i)(5) of the  
22                 Clean Air Act;

23          E. Are not modifications under any  
24          provision of Title I of the Clean Air Act; and

25          F. Are not required to be processed as a  
26          significant modification.

27                 ii. Notwithstanding subparagraphs (a)(i) and  
28                 (b)(ii) of this subsection, minor permit  
29                 modification procedures may be used for permit  
30                 modifications involving the use of economic  
31                 incentives, marketable permits, emissions trading,  
32                 and other similar approaches, to the extent that  
33                 such minor permit modification procedures are  
34                 explicitly provided for in an applicable

1 implementation plan or in applicable requirements  
2 promulgated by USEPA.

3 iii. An applicant requesting the use of minor  
4 permit modification procedures shall meet the  
5 requirements of subsection 5 of this Section and  
6 shall include the following in its application:

7 A. A description of the change, the  
8 emissions resulting from the change, and any  
9 new applicable requirements that will apply if  
10 the change occurs;

11 B. The source's suggested draft permit;

12 C. Certification by a responsible  
13 official, consistent with paragraph 5(e) of  
14 this Section and applicable regulations, that  
15 the proposed modification meets the criteria  
16 for use of minor permit modification procedures  
17 and a request that such procedures be used; and

18 D. Completed forms for the Agency to use  
19 to notify USEPA and affected States as required  
20 under subsections 8 and 9 of this Section.

21 iv. Within 5 working days of receipt of a  
22 complete permit modification application, the Agency  
23 shall notify USEPA and affected States of the  
24 requested permit modification in accordance with  
25 subsections 8 and 9 of this Section. The Agency  
26 promptly shall send any notice required under  
27 paragraph 8(d) of this Section to USEPA.

28 v. The Agency may not issue a final permit  
29 modification until after the 45-day review period  
30 for USEPA or until USEPA has notified the Agency  
31 that USEPA will not object to the issuance of the  
32 permit modification, whichever comes first, although  
33 the Agency can approve the permit modification prior  
34 to that time. Within 90 days of the Agency's

1 receipt of an application under the minor permit  
2 modification procedures or 15 days after the end of  
3 USEPA's 45-day review period under subsection 9 of  
4 this Section, whichever is later, the Agency shall:

5 A. Issue the permit modification as  
6 proposed;

7 B. Deny the permit modification  
8 application;

9 C. Determine that the requested  
10 modification does not meet the minor permit  
11 modification criteria and should be reviewed  
12 under the significant modification procedures;  
13 or

14 D. Revise the draft permit modification  
15 and transmit to USEPA the new proposed permit  
16 modification as required by subsection 9 of  
17 this Section.

18 vi. Any CAAPP source may make the change  
19 proposed in its minor permit modification  
20 application immediately after it files such  
21 application. After the CAAPP source makes the  
22 change allowed by the preceding sentence, and until  
23 the Agency takes any of the actions specified in  
24 subparagraphs (a)(v)(A) through (a)(v)(C) of this  
25 subsection, the source must comply with both the  
26 applicable requirements governing the change and the  
27 proposed permit terms and conditions. During this  
28 time period, the source need not comply with the  
29 existing permit terms and conditions it seeks to  
30 modify. If the source fails to comply with its  
31 proposed permit terms and conditions during this  
32 time period, the existing permit terms and  
33 conditions which it seeks to modify may be enforced  
34 against it.

1           vii. The permit shield under subparagraph 7(j)  
2 of this Section may not extend to minor permit  
3 modifications.

4           viii. If a construction permit is required,  
5 pursuant to Section 39(a) of this Act and  
6 regulations thereunder, for a change for which the  
7 minor permit modification procedures are applicable,  
8 the source may request that the processing of the  
9 construction permit application be consolidated with  
10 the processing of the application for the minor  
11 permit modification. In such cases, the provisions  
12 of this Section, including those within subsections  
13 5, 8, and 9, shall apply and the Agency shall act on  
14 such applications pursuant to subparagraph 14(a)(v).  
15 The source may make the proposed change immediately  
16 after filing its application for the minor permit  
17 modification. Nothing in this subparagraph shall  
18 otherwise affect the requirements and procedures  
19 applicable to construction permits.

20           b. Group Processing of Minor Permit Modifications.

21           i. Where requested by an applicant within its  
22 application, the Agency shall process groups of a  
23 source's applications for certain modifications  
24 eligible for minor permit modification processing  
25 in accordance with the provisions of this paragraph  
26 (b).

27           ii. Permit modifications may be processed in  
28 accordance with the procedures for group processing,  
29 for those modifications:

30           A. Which meet the criteria for minor  
31 permit modification procedures under  
32 subparagraph 14(a)(i) of this Section; and

33           B. That collectively are below 10 percent  
34 of the emissions allowed by the permit for the



1 emissions unit for which change is requested,  
2 20 percent of the applicable definition of  
3 major source set forth in subsection 2 of this  
4 Section, or 5 tons per year, whichever is  
5 least.

6 iii. An applicant requesting the use of group  
7 processing procedures shall meet the requirements of  
8 subsection 5 of this Section and shall include the  
9 following in its application:

10 A. A description of the change, the  
11 emissions resulting from the change, and any  
12 new applicable requirements that will apply if  
13 the change occurs.

14 B. The source's suggested draft permit.

15 C. Certification by a responsible  
16 official consistent with paragraph 5(e) of this  
17 Section, that the proposed modification meets  
18 the criteria for use of group processing  
19 procedures and a request that such procedures  
20 be used.

21 D. A list of the source's other pending  
22 applications awaiting group processing, and a  
23 determination of whether the requested  
24 modification, aggregated with these other  
25 applications, equals or exceeds the threshold  
26 set under subparagraph (b)(ii)(B) of this  
27 subsection.

28 E. Certification, consistent with  
29 paragraph 5(e), that the source has notified  
30 USEPA of the proposed modification. Such  
31 notification need only contain a brief  
32 description of the requested modification.

33 F. Completed forms for the Agency to use  
34 to notify USEPA and affected states as required

1 under subsections 8 and 9 of this Section.

2 iv. On a quarterly basis or within 5 business  
3 days of receipt of an application demonstrating that  
4 the aggregate of a source's pending applications  
5 equals or exceeds the threshold level set forth  
6 within subparagraph (b)(ii)(B) of this subsection,  
7 whichever is earlier, the Agency shall promptly  
8 notify USEPA and affected States of the requested  
9 permit modifications in accordance with subsections  
10 8 and 9 of this Section. The Agency shall send any  
11 notice required under paragraph 8(d) of this Section  
12 to USEPA.

13 v. The provisions of subparagraph (a)(v) of  
14 this subsection shall apply to modifications  
15 eligible for group processing, except that the  
16 Agency shall take one of the actions specified in  
17 subparagraphs (a)(v)(A) through (a)(v)(D) of this  
18 subsection within 180 days of receipt of the  
19 application or 15 days after the end of USEPA's  
20 45-day review period under subsection 9 of this  
21 Section, whichever is later.

22 vi. The provisions of subparagraph (a)(vi) of  
23 this subsection shall apply to modifications for  
24 group processing.

25 vii. The provisions of paragraph 7(j) of this  
26 Section shall not apply to modifications eligible  
27 for group processing.

28 c. Significant Permit Modifications.

29 i. Significant modification procedures shall  
30 be used for applications requesting significant  
31 permit modifications and for those applications that  
32 do not qualify as either minor permit modifications  
33 or as administrative permit amendments.

34 ii. Every significant change in existing

1 monitoring permit terms or conditions and every  
2 relaxation of reporting or recordkeeping  
3 requirements shall be considered significant. A  
4 modification shall also be considered significant if  
5 in the judgment of the Agency action on an  
6 application for modification would require decisions  
7 to be made on technically complex issues. Nothing  
8 herein shall be construed to preclude the permittee  
9 from making changes consistent with this Section  
10 that would render existing permit compliance terms  
11 and conditions irrelevant.

12 iii. Significant permit modifications must  
13 meet all the requirements of this Section, including  
14 those for applications (including completeness  
15 review), public participation, review by affected  
16 States, and review by USEPA applicable to initial  
17 permit issuance and permit renewal. The Agency  
18 shall take final action on significant permit  
19 modifications within 9 months after receipt of a  
20 complete application.

21 d. The Agency shall have the authority to adopt  
22 procedural rules, in accordance with the Illinois  
23 Administrative Procedure Act, as the Agency deems  
24 necessary, to implement this subsection.

25 15. Reopenings for Cause by the Agency.

26 a. Each issued CAAPP permit shall include  
27 provisions specifying the conditions under which the  
28 permit will be reopened prior to the expiration of the  
29 permit. Such revisions shall be made as expeditiously as  
30 practicable. A CAAPP permit shall be reopened and  
31 revised under any of the following circumstances, in  
32 accordance with procedures adopted by the Agency:

33 i. Additional requirements under the Clean Air  
34 Act become applicable to a major CAAPP source for

1           which 3 or more years remain on the original term of  
2           the permit. Such a reopening shall be completed not  
3           later than 18 months after the promulgation of the  
4           applicable requirement. No such revision is  
5           required if the effective date of the requirement is  
6           later than the date on which the permit is due to  
7           expire.

8           ii. Additional requirements (including excess  
9           emissions requirements) become applicable to an  
10          affected source for acid deposition under the acid  
11          rain program. Excess emissions offset plans shall  
12          be deemed to be incorporated into the permit upon  
13          approval by USEPA.

14          iii. The Agency or USEPA determines that the  
15          permit contains a material mistake or that  
16          inaccurate statements were made in establishing the  
17          emissions standards, limitations, or other terms or  
18          conditions of the permit.

19          iv. The Agency or USEPA determines that the  
20          permit must be revised or revoked to assure  
21          compliance with the applicable requirements.

22          b. In the event that the Agency determines that  
23          there are grounds for revoking a CAAPP permit, for cause,  
24          consistent with paragraph a of this subsection, it shall  
25          file a petition before the Board setting forth the basis  
26          for such revocation. In any such proceeding, the Agency  
27          shall have the burden of establishing that the permit  
28          should be revoked under the standards set forth in this  
29          Act and the Clean Air Act. Any such proceeding shall be  
30          conducted pursuant to the Board's procedures for  
31          adjudicatory hearings and the Board shall render its  
32          decision within 120 days of the filing of the petition.  
33          The Agency shall take final action to revoke and reissue  
34          a CAAPP permit consistent with the Board's order.

1           c. Proceedings regarding a reopened CAAPP permit  
2 shall follow the same procedures as apply to initial  
3 permit issuance and shall affect only those parts of the  
4 permit for which cause to reopen exists.

5           d. Reopenings under paragraph (a) of this  
6 subsection shall not be initiated before a notice of such  
7 intent is provided to the CAAPP source by the Agency at  
8 least 30 days in advance of the date that the permit is  
9 to be reopened, except that the Agency may provide a  
10 shorter time period in the case of an emergency.

11          e. The Agency shall have the authority to adopt  
12 procedural rules, in accordance with the Illinois  
13 Administrative Procedure Act, as the Agency deems  
14 necessary, to implement this subsection.

15          16. Reopenings for Cause by USEPA.

16          a. When USEPA finds that cause exists to terminate,  
17 modify, or revoke and reissue a CAAPP permit pursuant to  
18 subsection 15 of this Section, and thereafter notifies  
19 the Agency and the permittee of such finding in writing,  
20 the Agency shall forward to USEPA and the permittee a  
21 proposed determination of termination, modification, or  
22 revocation and reissuance as appropriate, in accordance  
23 with paragraph b of this subsection. The Agency's  
24 proposed determination shall be in accordance with the  
25 record, the Clean Air Act, regulations promulgated  
26 thereunder, this Act and regulations promulgated  
27 thereunder. Such proposed determination shall not affect  
28 the permit or constitute a final permit action for  
29 purposes of this Act or the Administrative Review Law.  
30 The Agency shall forward to USEPA such proposed  
31 determination within 90 days after receipt of the  
32 notification from USEPA. If additional time is necessary  
33 to submit the proposed determination, the Agency shall  
34 request a 90-day extension from USEPA and shall submit

1 the proposed determination within 180 days of receipt of  
2 notification from USEPA.

3 b. i. Prior to the Agency's submittal to USEPA  
4 of a proposed determination to terminate or revoke  
5 and reissue the permit, the Agency shall file a  
6 petition before the Board setting forth USEPA's  
7 objection, the permit record, the Agency's proposed  
8 determination, and the justification for its  
9 proposed determination. The Board shall conduct a  
10 hearing pursuant to the rules prescribed by Section  
11 32 of this Act, and the burden of proof shall be on  
12 the Agency.

13 ii. After due consideration of the written and  
14 oral statements, the testimony and arguments that  
15 shall be submitted at hearing, the Board shall issue  
16 and enter an interim order for the proposed  
17 determination, which shall set forth all changes, if  
18 any, required in the Agency's proposed  
19 determination. The interim order shall comply with  
20 the requirements for final orders as set forth in  
21 Section 33 of this Act. Issuance of an interim order  
22 by the Board under this paragraph, however, shall  
23 not affect the permit status and does not constitute  
24 a final action for purposes of this Act or the  
25 Administrative Review Law.

26 iii. The Board shall cause a copy of its  
27 interim order to be served upon all parties to the  
28 proceeding as well as upon USEPA. The Agency shall  
29 submit the proposed determination to USEPA in  
30 accordance with the Board's Interim Order within 180  
31 days after receipt of the notification from USEPA.

32 c. USEPA shall review the proposed determination to  
33 terminate, modify, or revoke and reissue the permit  
34 within 90 days of receipt.

1           i. When USEPA reviews the proposed  
2 determination to terminate or revoke and reissue and  
3 does not object, the Board shall, within 7 days of  
4 receipt of USEPA's final approval, enter the interim  
5 order as a final order. The final order may be  
6 appealed as provided by Title XI of this Act. The  
7 Agency shall take final action in accordance with  
8 the Board's final order.

9           ii. When USEPA reviews such proposed  
10 determination to terminate or revoke and reissue and  
11 objects, the Agency shall submit USEPA's objection  
12 and the Agency's comments and recommendation on the  
13 objection to the Board and permittee. The Board  
14 shall review its interim order in response to  
15 USEPA's objection and the Agency's comments and  
16 recommendation and issue a final order in accordance  
17 with Sections 32 and 33 of this Act. The Agency  
18 shall, within 90 days after receipt of such  
19 objection, respond to USEPA's objection in  
20 accordance with the Board's final order.

21           iii. When USEPA reviews such proposed  
22 determination to modify and objects, the Agency  
23 shall, within 90 days after receipt of the  
24 objection, resolve the objection and modify the  
25 permit in accordance with USEPA's objection, based  
26 upon the record, the Clean Air Act, regulations  
27 promulgated thereunder, this Act, and regulations  
28 promulgated thereunder.

29           d. If the Agency fails to submit the proposed  
30 determination pursuant to paragraph a of this subsection  
31 or fails to resolve any USEPA objection pursuant to  
32 paragraph c of this subsection, USEPA will terminate,  
33 modify, or revoke and reissue the permit.

34           e. The Agency shall have the authority to adopt

1 procedural rules, in accordance with the Illinois  
2 Administrative Procedure Act, as the Agency deems  
3 necessary, to implement this subsection.

4 17. Title IV; Acid Rain Provisions.

5 a. The Agency shall act on initial CAAPP  
6 applications for affected sources for acid deposition in  
7 accordance with this Section and Title V of the Clean Air  
8 Act and regulations promulgated thereunder, except as  
9 modified by Title IV of the Clean Air Act and regulations  
10 promulgated thereunder. The Agency shall issue initial  
11 CAAPP permits to the affected sources for acid deposition  
12 which shall become effective no earlier than January 1,  
13 1995, and which shall terminate on December 31, 1999, in  
14 accordance with this Section. Subsequent CAAPP permits  
15 issued to affected sources for acid deposition shall be  
16 issued for a fixed term of 5 years. Title IV of the Clean  
17 Air Act and regulations promulgated thereunder, including  
18 but not limited to 40 C.F.R. Part 72, as now or hereafter  
19 amended, are applicable to and enforceable under this  
20 Act.

21 b. A designated representative of an affected  
22 source for acid deposition shall submit a timely and  
23 complete Phase II acid rain permit application and  
24 compliance plan to the Agency, not later than January 1,  
25 1996, that meets the requirements of Titles IV and V of  
26 the Clean Air Act and regulations. The Agency shall act  
27 on the Phase II acid rain permit application and  
28 compliance plan in accordance with this Section and Title  
29 V of the Clean Air Act and regulations promulgated  
30 thereunder, except as modified by Title IV of the Clean  
31 Air Act and regulations promulgated thereunder. The  
32 Agency shall issue the Phase II acid rain permit to an  
33 affected source for acid deposition no later than  
34 December 31, 1997, which shall become effective on



1 January 1, 2000, in accordance with this Section, except  
2 as modified by Title IV and regulations promulgated  
3 thereunder; provided that the designated representative  
4 of the source submitted a timely and complete Phase II  
5 permit application and compliance plan to the Agency that  
6 meets the requirements of Title IV and V of the Clean Air  
7 Act and regulations.

8 c. Each Phase II acid rain permit issued in  
9 accordance with this subsection shall have a fixed term  
10 of 5 years. Except as provided in paragraph b above, the  
11 Agency shall issue or deny a Phase II acid rain permit  
12 within 18 months of receiving a complete Phase II permit  
13 application and compliance plan.

14 d. A designated representative of a new unit, as  
15 defined in Section 402 of the Clean Air Act, shall submit  
16 a timely and complete Phase II acid rain permit  
17 application and compliance plan that meets the  
18 requirements of Titles IV and V of the Clean Air Act and  
19 its regulations. The Agency shall act on the new unit's  
20 Phase II acid rain permit application and compliance plan  
21 in accordance with this Section and Title V of the Clean  
22 Air Act and its regulations, except as modified by Title  
23 IV of the Clean Air Act and its regulations. The Agency  
24 shall reopen the new unit's CAAPP permit for cause to  
25 incorporate the approved Phase II acid rain permit in  
26 accordance with this Section. The Phase II acid rain  
27 permit for the new unit shall become effective no later  
28 than the date required under Title IV of the Clean Air  
29 Act and its regulations.

30 e. A designated representative of an affected  
31 source for acid deposition shall submit a timely and  
32 complete Title IV NOx permit application to the Agency,  
33 not later than January 1, 1998, that meets the  
34 requirements of Titles IV and V of the Clean Air Act and

1 its regulations. The Agency shall reopen the Phase II  
2 acid rain permit for cause and incorporate the approved  
3 NOx provisions into the Phase II acid rain permit not  
4 later than January 1, 1999, in accordance with this  
5 Section, except as modified by Title IV of the Clean Air  
6 Act and regulations promulgated thereunder. Such  
7 reopening shall not affect the term of the Phase II acid  
8 rain permit.

9 f. The designated representative of the affected  
10 source for acid deposition shall renew the initial CAAPP  
11 permit and Phase II acid rain permit in accordance with  
12 this Section and Title V of the Clean Air Act and  
13 regulations promulgated thereunder, except as modified by  
14 Title IV of the Clean Air Act and regulations promulgated  
15 thereunder.

16 g. In the case of an affected source for acid  
17 deposition for which a complete Phase II acid rain permit  
18 application and compliance plan are timely received under  
19 this subsection, the complete permit application and  
20 compliance plan, including amendments thereto, shall be  
21 binding on the owner, operator and designated  
22 representative, all affected units for acid deposition at  
23 the affected source, and any other unit, as defined in  
24 Section 402 of the Clean Air Act, governed by the Phase  
25 II acid rain permit application and shall be enforceable  
26 as an acid rain permit for purposes of Titles IV and V of  
27 the Clean Air Act, from the date of submission of the  
28 acid rain permit application until a Phase II acid rain  
29 permit is issued or denied by the Agency.

30 h. The Agency shall not include or implement any  
31 measure which would interfere with or modify the  
32 requirements of Title IV of the Clean Air Act or  
33 regulations promulgated thereunder.

34 i. Nothing in this Section shall be construed as

1 affecting allowances or USEPA's decision regarding an  
2 excess emissions offset plan, as set forth in Title IV of  
3 the Clean Air Act or regulations promulgated thereunder.

4 i. No permit revision shall be required for  
5 increases in emissions that are authorized by  
6 allowances acquired pursuant to the acid rain  
7 program, provided that such increases do not require  
8 a permit revision under any other applicable  
9 requirement.

10 ii. No limit shall be placed on the number of  
11 allowances held by the source. The source may not,  
12 however, use allowances as a defense to  
13 noncompliance with any other applicable requirement.

14 iii. Any such allowance shall be accounted for  
15 according to the procedures established in  
16 regulations promulgated under Title IV of the Clean  
17 Air Act.

18 j. To the extent that the federal regulations  
19 promulgated under Title IV, including but not limited to  
20 40 C.F.R. Part 72, as now or hereafter amended, are  
21 inconsistent with the federal regulations promulgated  
22 under Title V, the federal regulations promulgated under  
23 Title IV shall take precedence.

24 k. The USEPA may intervene as a matter of right in  
25 any permit appeal involving a Phase II acid rain permit  
26 provision or denial of a Phase II acid rain permit.

27 l. It is unlawful for any owner or operator to  
28 violate any terms or conditions of a Phase II acid rain  
29 permit issued under this subsection, to operate any  
30 affected source for acid deposition except in compliance  
31 with a Phase II acid rain permit issued by the Agency  
32 under this subsection, or to violate any other applicable  
33 requirements.

34 m. The designated representative of an affected

1 source for acid deposition shall submit to the Agency the  
2 data and information submitted quarterly to USEPA,  
3 pursuant to 40 CFR 75.64, concurrently with the  
4 submission to USEPA. The submission shall be in the same  
5 electronic format as specified by USEPA.

6 n. The Agency shall act on any petition for  
7 exemption of a new unit or retired unit, as those terms  
8 are defined in Section 402 of the Clean Air Act, from the  
9 requirements of the acid rain program in accordance with  
10 Title IV of the Clean Air Act and its regulations.

11 o. The Agency shall have the authority to adopt  
12 procedural rules, in accordance with the Illinois  
13 Administrative Procedure Act, as the Agency deems  
14 necessary to implement this subsection.

15 18. Fee Provisions.

16 a. For each 12 month period after the date on which  
17 the USEPA approves or conditionally approves the CAAPP,  
18 but in no event prior to January 1, 1994, a source  
19 subject to this Section or excluded under subsection 1.1  
20 or paragraph 3(c) of this Section, shall pay a fee as  
21 provided in this part (a) of this subsection 18.  
22 However, a source that has been excluded from the  
23 provisions of this Section under subsection 1.1 or  
24 paragraph 3(c) of this Section because the source emits  
25 less than 25 tons per year of any combination of  
26 regulated air pollutants shall pay fees in accordance  
27 with paragraph (1) of subsection (b) of Section 9.6.

28 i. The fee for a source allowed to emit less  
29 than 100 tons per year of any combination of  
30 regulated air pollutants shall be \$1,000 per year.

31 ii. The fee for a source allowed to emit 100  
32 tons or more per year of any combination of  
33 regulated air pollutants, except for those regulated  
34 air pollutants excluded in paragraph 18(f) of this

1 subsection, shall be as follows:

2 A. The Agency shall assess an annual fee  
3 of \$13.50 per ton for the allowable emissions  
4 of all regulated air pollutants at that source  
5 during the term of the permit. These fees  
6 shall be used by the Agency and the Board to  
7 fund the activities required by Title V of the  
8 Clean Air Act including such activities as may  
9 be carried out by other State or local agencies  
10 pursuant to paragraph (d) of this subsection.  
11 The amount of such fee shall be based on the  
12 information supplied by the applicant in its  
13 complete CAAPP permit application or in the  
14 CAAPP permit if the permit has been granted and  
15 shall be determined by the amount of emissions  
16 that the source is allowed to emit annually,  
17 provided however, that no source shall be  
18 required to pay an annual fee in excess of  
19 \$100,000. The Agency shall provide as part of  
20 the permit application form required under  
21 subsection 5 of this Section a separate fee  
22 calculation form which will allow the applicant  
23 to identify the allowable emissions and  
24 calculate the fee for the term of the permit.  
25 In no event shall the Agency raise the amount  
26 of allowable emissions requested by the  
27 applicant unless such increases are required to  
28 demonstrate compliance with terms of a CAAPP  
29 permit.

30 Notwithstanding the above, any applicant  
31 may seek a change in its permit which would  
32 result in increases in allowable emissions due  
33 to an increase in the hours of operation or  
34 production rates of an emission unit or units

1 and such a change shall be consistent with the  
2 construction permit requirements of the  
3 existing State permit program, under Section  
4 39(a) of this Act and applicable provisions of  
5 this Section. Where a construction permit is  
6 required, the Agency shall expeditiously grant  
7 such construction permit and shall, if  
8 necessary, modify the CAAPP permit based on the  
9 same application.

10 B. Except for the first year of the  
11 CAAPP, the applicant or permittee may pay the  
12 fee annually or semiannually for those fees  
13 greater than \$5,000.

14 b. For fiscal year 1999 and each fiscal year  
15 thereafter, to the extent that permit fees collected and  
16 deposited in the CAA Permit Fund during that fiscal year  
17 exceed 115% of the actual expenditures (excluding permit  
18 fee reimbursements) from the CAA Permit Fund for that  
19 fiscal year (including lapse period spending and  
20 appropriations for expenses incurred under the  
21 Northeastern Illinois Nonattainment Area Planning Council  
22 Act), the excess shall be reimbursed to the permittees in  
23 proportion to their original fee payments. Such  
24 reimbursements shall be made during the next fiscal year  
25 and may be made in the form of a credit against that  
26 fiscal year's permit fee.

27 c. There shall be created a CAA Fee Panel of 5  
28 persons. The Panel shall:

29 i. If it deems necessary on an annual basis,  
30 render advisory opinions to the Agency and the  
31 General Assembly regarding the appropriate level of  
32 Title V Clean Air Act fees for the next fiscal year.  
33 Such advisory opinions shall be based on a study of  
34 the operations of the Agency and any other entity

1            requesting appropriations from the CAA Permit Fund.  
2            This study shall recommend changes in the fee  
3            structure, if warranted. The study will be based on  
4            the ability of the Agency or other entity to  
5            effectively utilize the funds generated as well as  
6            the entity's conformance with the objectives and  
7            measurable benchmarks identified by the Agency as  
8            justification for the prior year's fee. Such  
9            advisory opinions shall be submitted to the  
10           appropriation committees no later than April 15th of  
11           each year.

12                ii. Not be compensated for their services, but  
13                shall receive reimbursement for their expenses.

14                iii. Be appointed as follows: 4 members by  
15                the Director of the Agency from a list of no more  
16                than 8 persons, submitted by representatives of  
17                associations who represent facilities subject to the  
18                provisions of this subsection and the Director of  
19                the Agency or designee.

20                d. There is hereby created in the State Treasury a  
21                special fund to be known as the "CAA Permit Fund". All  
22                Funds collected by the Agency pursuant to this subsection  
23                shall be deposited into the Fund. The General Assembly  
24                shall appropriate monies from this Fund to the Agency and  
25                to the Board to carry out their obligations under this  
26                Section. The General Assembly may also authorize monies  
27                to be granted by the Agency from this Fund to other State  
28                and local agencies which perform duties related to the  
29                CAAPP. Interest generated on the monies deposited in this  
30                Fund shall be returned to the Fund. The General Assembly  
31                may appropriate up to the sum of \$25,000 to the Agency  
32                from the CAA Permit Fund for use by the Panel in carrying  
33                out its responsibilities under this subsection.

34                e. The Agency shall have the authority to adopt

1 procedural rules, in accordance with the Illinois  
2 Administrative Procedure Act, as the Agency deems  
3 necessary to implement this subsection.

4 f. For purposes of this subsection, the term  
5 "regulated air pollutant" shall have the meaning given to  
6 it under subsection 1 of this Section but shall exclude  
7 the following:

8 i. carbon monoxide;

9 ii. any Class I or II substance which is a  
10 regulated air pollutant solely because it is listed  
11 pursuant to Section 602 of the Clean Air Act;

12 iii. any pollutant that is a regulated air  
13 pollutant solely because it is subject to a standard  
14 or regulation under Section 112(r) of the Clean Air  
15 Act based on the emissions allowed in the permit  
16 effective in that calendar year, at the time the  
17 applicable bill is generated; and

18 iv. during the years 1995 through 1999  
19 inclusive, any emissions from affected sources for  
20 acid deposition under Section 408(c)(4) of the Clean  
21 Air Act.

22 19. Air Toxics Provisions.

23 a. In the event that the USEPA fails to promulgate  
24 in a timely manner a standard pursuant to Section 112(d)  
25 of the Clean Air Act, the Agency shall have the authority  
26 to issue permits, pursuant to Section 112(j) of the Clean  
27 Air Act and regulations promulgated thereunder, which  
28 contain emission limitations which are equivalent to the  
29 emission limitations that would apply to a source if an  
30 emission standard had been promulgated in a timely manner  
31 by USEPA pursuant to Section 112(d). Provided, however,  
32 that the owner or operator of a source shall have the  
33 opportunity to submit to the Agency a proposed emission  
34 limitation which it determines to be equivalent to the



1 emission limitations that would apply to such source if  
2 an emission standard had been promulgated in a timely  
3 manner by USEPA. If the Agency refuses to include the  
4 emission limitation proposed by the owner or operator in  
5 a CAAPP permit, the owner or operator may petition the  
6 Board to establish whether the emission limitation  
7 proposal submitted by the owner or operator provides for  
8 emission limitations which are equivalent to the emission  
9 limitations that would apply to the source if the  
10 emission standard had been promulgated by USEPA in a  
11 timely manner. The Board shall determine whether the  
12 emission limitation proposed by the owner or operator or  
13 an alternative emission limitation proposed by the Agency  
14 provides for the level of control required under Section  
15 112 of the Clean Air Act, or shall otherwise establish an  
16 appropriate emission limitation, pursuant to Section 112  
17 of the Clean Air Act.

18 b. Any Board proceeding brought under paragraph (a)  
19 or (e) of this subsection shall be conducted according to  
20 the Board's procedures for adjudicatory hearings and the  
21 Board shall render its decision within 120 days of the  
22 filing of the petition. Any such decision shall be  
23 subject to review pursuant to Section 41 of this Act.  
24 Where USEPA promulgates an applicable emission standard  
25 prior to the issuance of the CAAPP permit, the Agency  
26 shall include in the permit the promulgated standard,  
27 provided that the source shall have the compliance period  
28 provided under Section 112(i) of the Clean Air Act. Where  
29 USEPA promulgates an applicable standard subsequent to  
30 the issuance of the CAAPP permit, the Agency shall revise  
31 such permit upon the next renewal to reflect the  
32 promulgated standard, providing a reasonable time for the  
33 applicable source to comply with the standard, but no  
34 longer than 8 years after the date on which the source is

1 first required to comply with the emissions limitation  
2 established under this subsection.

3 c. The Agency shall have the authority to implement  
4 and enforce complete or partial emission standards  
5 promulgated by USEPA pursuant to Section 112(d), and  
6 standards promulgated by USEPA pursuant to Sections  
7 112(f), 112(h), 112(m), and 112(n), and may accept  
8 delegation of authority from USEPA to implement and  
9 enforce Section 112(l) and requirements for the  
10 prevention and detection of accidental releases pursuant  
11 to Section 112(r) of the Clean Air Act.

12 d. The Agency shall have the authority to issue  
13 permits pursuant to Section 112(i)(5) of the Clean Air  
14 Act.

15 e. The Agency has the authority to implement  
16 Section 112(g) of the Clean Air Act consistent with the  
17 Clean Air Act and federal regulations promulgated  
18 thereunder. If the Agency refuses to include the emission  
19 limitations proposed in an application submitted by an  
20 owner or operator for a case-by-case maximum achievable  
21 control technology (MACT) determination, the owner or  
22 operator may petition the Board to determine whether the  
23 emission limitation proposed by the owner or operator or  
24 an alternative emission limitation proposed by the Agency  
25 provides for a level of control required by Section 112  
26 of the Clean Air Act, or to otherwise establish an  
27 appropriate emission limitation under Section 112 of the  
28 Clean Air Act.

29 20. Small Business.

30 a. For purposes of this subsection:

31 "Program" is the Small Business Stationary Source  
32 Technical and Environmental Compliance Assistance Program  
33 created within this State pursuant to Section 507 of the  
34 Clean Air Act and guidance promulgated thereunder, to

1 provide technical assistance and compliance information  
2 to small business stationary sources;

3 "Small Business Assistance Program" is a component  
4 of the Program responsible for providing sufficient  
5 communications with small businesses through the  
6 collection and dissemination of information to small  
7 business stationary sources; and

8 "Small Business Stationary Source" means a  
9 stationary source that:

10 1. is owned or operated by a person that  
11 employs 100 or fewer individuals;

12 2. is a small business concern as defined in  
13 the "Small Business Act";

14 3. is not a major source as that term is  
15 defined in subsection 2 of this Section;

16 4. does not emit 50 tons or more per year of  
17 any regulated air pollutant; and

18 5. emits less than 75 tons per year of all  
19 regulated pollutants.

20 b. The Agency shall adopt and submit to USEPA,  
21 after reasonable notice and opportunity for public  
22 comment, as a revision to the Illinois state  
23 implementation plan, plans for establishing the Program.

24 c. The Agency shall have the authority to enter  
25 into such contracts and agreements as the Agency deems  
26 necessary to carry out the purposes of this subsection.

27 d. The Agency may establish such procedures as it  
28 may deem necessary for the purposes of implementing and  
29 executing its responsibilities under this subsection.

30 e. There shall be appointed a Small Business  
31 Ombudsman (hereinafter in this subsection referred to as  
32 "Ombudsman") to monitor the Small Business Assistance  
33 Program. The Ombudsman shall be a nonpartisan designated  
34 official, with the ability to independently assess

1 whether the goals of the Program are being met.

2 f. The State Ombudsman Office shall be located in  
3 an existing Ombudsman office within the State or in any  
4 State Department.

5 g. There is hereby created a State Compliance  
6 Advisory Panel (hereinafter in this subsection referred  
7 to as "Panel") for determining the overall effectiveness  
8 of the Small Business Assistance Program within this  
9 State.

10 h. The selection of Panel members shall be by the  
11 following method:

12 1. The Governor shall select two members who  
13 are not owners or representatives of owners of small  
14 business stationary sources to represent the general  
15 public;

16 2. The Director of the Agency shall select one  
17 member to represent the Agency; and

18 3. The State Legislature shall select four  
19 members who are owners or representatives of owners  
20 of small business stationary sources. Both the  
21 majority and minority leadership in both Houses of  
22 the Legislature shall appoint one member of the  
23 panel.

24 i. Panel members should serve without compensation  
25 but will receive full reimbursement for expenses  
26 including travel and per diem as authorized within this  
27 State.

28 j. The Panel shall select its own Chair by a  
29 majority vote. The Chair may meet and consult with the  
30 Ombudsman and the head of the Small Business Assistance  
31 Program in planning the activities for the Panel.

32 21. Temporary Sources.

33 a. The Agency may issue a single permit authorizing  
34 emissions from similar operations by the same source

1 owner or operator at multiple temporary locations, except  
2 for sources which are affected sources for acid  
3 deposition under Title IV of the Clean Air Act.

4 b. The applicant must demonstrate that the  
5 operation is temporary and will involve at least one  
6 change of location during the term of the permit.

7 c. Any such permit shall meet all applicable  
8 requirements of this Section and applicable regulations,  
9 and include conditions assuring compliance with all  
10 applicable requirements at all authorized locations and  
11 requirements that the owner or operator notify the Agency  
12 at least 10 days in advance of each change in location.

13 22. Solid Waste Incineration Units.

14 a. A CAAPP permit for a solid waste incineration  
15 unit combusting municipal waste subject to standards  
16 promulgated under Section 129(e) of the Clean Air Act  
17 shall be issued for a period of 12 years and shall be  
18 reviewed every 5 years, unless the Agency requires more  
19 frequent review through Agency procedures.

20 b. During the review in paragraph (a) of this  
21 subsection, the Agency shall fully review the previously  
22 submitted CAAPP permit application and corresponding  
23 reports subsequently submitted to determine whether the  
24 source is in compliance with all applicable requirements.

25 c. If the Agency determines that the source is not  
26 in compliance with all applicable requirements it shall  
27 revise the CAAPP permit as appropriate.

28 d. The Agency shall have the authority to adopt  
29 procedural rules, in accordance with the Illinois  
30 Administrative Procedure Act, as the Agency deems  
31 necessary, to implement this subsection.

32 (Source: P.A. 89-79, eff. 6-30-95; 90-14, eff. 7-1-97;  
33 90-367, eff. 8-10-97; 90-773, eff. 8-14-98.)

1           Section 999. Effective date. This Act takes effect upon  
2    becoming law.